

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW JERSEY

3
4 UNITED STATES OF AMERICA, et CIVIL ACTION NUMBER:
5 al, 3:12-cv-07758-ZNQ-JBD
6 Plaintiffs,
7 v. JURY TRIAL - VOLUME 9

8
9 JOHNSON & JOHNSON, JANSSEN
10 PRODUCTS, L.P.
11 Defendants.

12
13 Clarkson S. Fisher Building & U.S. Courthouse
14 402 East State Street
15 Trenton, New Jersey 08608
16 May 22, 2024
17 Commencing at 8:30 a.m.

18
19 B E F O R E: THE HONORABLE ZAHID N. QURAISHI,
20 UNITED STATES DISTRICT JUDGE

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1 (PROCEEDINGS held in open court before The Honorable
2 ZAHID N. QURAIISHI, United States District Judge, on May 22,
3 2024, at 8:30 a.m.)

4 THE DEPUTY COURT CLERK: All rise.

5 THE COURT: All right, folks. Be seated. Thank you.

6 Folks, we are on the record again. Before we chat,
7 let's just get appearances from counsel like we always do,
8 beginning with Relators' counsel.

9 MR. MARKETOS: Good morning, Your Honor.
10 Pete Marketos for the Relators.

11 MS. WENDEL: Good morning. Whitney Wendel for the
12 Relators.

13 MR. WIRMANI: Good morning. Andrew Wirmani for the
14 Relators.

15 MR. RUSS: Josh Russ for the Relators.

16 THE COURT: Good morning, folks.

17 MS. BROWN: Good morning, Your Honor. Alli Brown for
18 Janssen.

19 MR. WYATT: Good morning, Your Honor. Jeff Wyatt for
20 Janssen.

21 MR. KLEIN: Good morning, Your Honor. Brad Klein for
22 Janssen.

23 THE COURT: All right. Good morning to all of you as
24 well.

25 So let's -- I don't know where we want to begin. Do we

1 want to first talk about the settlement agreement issue?

2 MR. MARKETOS: Sure, Your Honor. That would be fine.

3 THE COURT: All right.

4 MR. MARKETOS: So, Your Honor, let me just start
5 here. We provided a copy of the settlement agreement and
6 portions of it that are relevant that we want to get before
7 the jury and why.

8 So the settlement agreement -- may I use the ELMO?
9 That may be the best way.

10 Can you switch to the ELMO, please, when you get a
11 chance.

12 May I approach?

13 THE COURT: You may.

14 MR. MARKETOS: Thank you.

15 So, Your Honor --

16 (Brief pause.)

17 MR. MARKETOS: Sorry, Your Honor.

18 THE COURT: No, no. That's all right.

19 So this is the -- you're showing me the -- which
20 settlement agreement is this?

21 MR. MARKETOS: Yes, Your Honor.

22 THE COURT: Are there two? Is it like the CIAs?
23 You're trying to move in one from 2010 and one from 2013?

24 MR. MARKETOS: So there's not a settlement agreement
25 accessible for 2010. There are two CIAs, Your Honor, 2010,

1 2013, and a settlement agreement at 2013.

2 THE COURT: So that's all we are talking about this
3 morning?

4 MR. MARKETOS: Yes, Your Honor.

5 THE COURT: Okay. I just want to be clear.

6 MR. MARKETOS: And this is the settlement agreement
7 that was the subject of Your Honor's ruling and the motion in
8 limine along with the corporate integrity agreement.

9 And the corporate integrity agreement does have some
10 general allegations of illegal conduct, but the settlement
11 agreement is specific to exactly what the allegations were:
12 promoting the sale and use of Risperdal for conditions for
13 which it was not approved that's safe and effective, were not
14 covered by the United States in Medicaid programs. Okay?

15 So the reimbursements for medically accepted
16 indications that were not covered by the United States and
17 state Medicaid programs. They made false and misleading
18 statements about the safety and efficacy of Risperdal --

19 THE COURT: No, no. I see it. You don't have to
20 read the whole thing. But I get it.

21 So that language you're saying, that specificity is not
22 in the CIA, the correlating CIA?

23 MR. MARKETOS: It's not, Your Honor.

24 THE COURT: Okay.

25 MR. MARKETOS: You could patch pieces together, if

1 you wanted to, from the CIA, but you can't get these
2 allegations.

3 THE COURT: All right. What else is in here that you
4 want to show me?

5 MR. MARKETOS: There are also references to
6 defendants -- and this is important -- defendants paying back
7 amounts that were specifically -- excuse me -- "shall pay to
8 the United States the Medicaid settlement amount." And
9 then -- sorry.

10 THE COURT: Just to be clear, because that was pretty
11 fast what you're doing there.

12 MR. MARKETOS: Yeah, it was.

13 THE COURT: There's a provision about Janssen
14 reimbursing or paying back to the Government, but you've
15 redacted what dollar amounts are involved.

16 Is that correct?

17 MR. MARKETOS: That's right.

18 THE COURT: Okay.

19 MR. MARKETOS: And so, of course, it goes to the
20 essence of the Government requiring payback.

21 THE COURT: And the CIA doesn't address the
22 reimbursement piece or the payback to the Government piece?

23 MR. MARKETOS: It addresses that there's a settlement
24 agreement where they shall pay. It doesn't address with the
25 specificity that there's -- it's payments for Medicare and

1 Medicaid monies.

2 THE COURT: Okay.

3 MR. MARKETOS: Okay.

4 THE COURT: I got it.

5 MR. MARKETOS: So that's the gist of the specificity
6 there, and that's why we need to get into it.

7 THE COURT: Okay. I understand, Mr. Marketos.

8 Mr. Wyatt, are you addressing this?

9 MR. WYATT: Yes. Good morning, Your Honor.

10 THE COURT: Good morning.

11 MR. WYATT: Our concern remains that this is piling
12 on, and I think there's other aspects of the settlement
13 agreement, particularly in the first passage that was
14 identified by counsel, where in addition to the parts that
15 were highlighted, it also gets into the specific indications
16 of the drug, the specific indications for which it was
17 marketed that were not on the label. And so we're starting to
18 get into the granular details of the drug that I thought we
19 were trying to stay away from.

20 THE COURT: Are there other areas that you think
21 should be redacted?

22 MR. WYATT: I don't know that redaction would solve
23 it. I remain concerned, apart from that, that we're just
24 piling on by suggesting to the jury that there was some sort
25 of acceptance of responsibility or some validity to the

1 allegations.

2 THE COURT: I thought there was some language,
3 though -- remind me -- I thought -- and I haven't seen it.
4 This is the first time I'm really looking at this agreement.
5 But isn't there language in this agreement -- I mean, almost
6 every settlement agreement would have some language that
7 states this is not admission or some words to that effect.

8 Is there that language there?

9 MR. WYATT: There is, Your Honor.

10 THE COURT: Can I see it?

11 MR. WYATT: Yes, Your Honor.

12 May I approach with a copy of the agreement for the
13 Court?

14 THE COURT: Yes, that would be even easier.

15 Liz, do you want to grab that?

16 Sorry. Liz is -- she's, like, what's going on here?
17 So thanks, Liz. Liz is helping out this morning for Kim. So
18 Kim will be here later this afternoon, but we're very
19 appreciative that Liz is here.

20 So we're in paragraph J?

21 MR. WYATT: I believe so, Your Honor. Let me just
22 find my copy.

23 Yes, that's right. Compromise the disputed claims.
24 The agreement is not an admission of facts or liability by the
25 defendants.

1 But we're really asking the jury to parse this and sort
2 of interpret a settlement agreement. And I just think it's
3 too far down the rabbit hole.

4 THE COURT: Well, let me ask you this, because I know
5 we talked about this briefly, now that I see the language
6 here.

7 I mean, you have the opportunity to not have them
8 locate this language somewhere in the agreement during
9 deliberations. You have the opportunity in real time to
10 highlight this language for the jury. No? Which I presume
11 you would do if I admitted this document.

12 So how is it kind of hidden in there where they may or
13 may not appreciate it when -- I mean, you all are highly
14 competent counsel. I'm confident that you will put this
15 before the jury, and I would permit it. Because if the
16 document is admitted, any portion of this agreement, as long
17 as there's no redactions, can get before the jury.

18 So doesn't that address the concern that they might
19 improperly presume that this is an admission or that there was
20 some other meaning behind it?

21 I'm asking you.

22 MR. WYATT: Yeah. I mean, Your Honor, correct. I
23 agree with Your Honor's suggestion that we could get into this
24 provision if the document comes in.

25 My concern is more just getting to the document in the

1 first place because we're getting really into sort of
2 collateral levels and granular levels of details about these
3 other cases. And we've already sort of seen the way this is
4 used yesterday as really more of a propensity type of argument
5 that I thought we were not going to get into with these
6 documents.

7 There was testimony from -- there were questionings --
8 questions to Mr. Mattes saying, "In fact, the Government has
9 had enforcement actions about specific drugs that you were
10 selling before, Topamax, right?"

11 And then later, "And that, sir, Topamax, that was a
12 drug that you were overseeing at Ortho-McNeil."

13 So the way we're seeing these questions being put to
14 the witness and the way that the CIA and the settlements are
15 being referenced is really to say, You did this once; aren't
16 you just doing it again here--

17 THE COURT: Well, I don't agree with that. I -- I
18 understand there's a concern there about that, but that's why
19 you have an instruction. Right? We provide an instruction
20 with the corporate integrity agreements. There's no reason
21 why I wouldn't have a similar instruction for the settlement
22 agreement. And those instructions will be given to the jury
23 during deliberations, not only verbally but in writing because
24 they always get a few copies, at least my practice, of the
25 instructions with them so they can refer to them as needed.

1 So I think there's a protection there. I don't think
2 Relators' counsel went into propensity at all. I think what
3 they're attempting to establish, which I allowed, was, you
4 know, this is important, that this is an issue that you dealt
5 with before with the United States, or with the Government,
6 however we want to say it. And so you're aware of these
7 issues. Right? It goes to materiality, and it goes to
8 absence of mistake and other issues but not propensity. In
9 fact, they are directed that they can't consider this evidence
10 of propensity.

11 And I will tell you now that if I admit it, I'm going
12 to give that instruction. Whether you all want me to say that
13 in real time or just make sure that it's part of the
14 instruction in the final instructions, I think that's going to
15 be critical because evidence like this has been admitted in
16 different trials, as long as the jury's instructed on how they
17 can consider it.

18 So is there anything else about the agreement,
19 Mr. Wyatt? I don't want to waste too much time, but I also
20 don't want to cut you off from building your record.

21 Is there anything more about the agreement that's a
22 concern for Janssen?

23 MR. WYATT: No, I understand the Court's ruling. I
24 guess I'll say I have concerns the instruction won't be
25 enough, just given the way the question went in, because I do

1 think it had at least aspects that were geared towards
2 propensity, and I think the questioning should stay away from
3 that.

4 THE COURT: I will say this -- I'm sorry.

5 MR. WYATT: I'm sorry. I have one other issue that's
6 related to this, but if you want to --

7 THE COURT: Well, let me just make one point to
8 Mr. Marketos.

9 I want to be very clear: Any of your examination
10 questions regarding the CIA or the settlement agreement -- and
11 by the way, I'm inclined to admit it, so I'm going to admit it
12 based on the arguments -- I'm going to stop you. And if I
13 find out that you've crossed the line in front of the jury
14 that's counter to my instruction, I may say something in front
15 of the jury to you about it. So I want you to be very
16 cautious about leaning into propensity.

17 And by the way, I don't think you've done that yet, but
18 because Janssen is raising that concern, I understand that
19 they already believe that concern is there. I'm not -- I
20 don't agree with Janssen on that point yet, but I also want
21 you to be mindful of that.

22 So are we clear that you can't be cross-examining or
23 trying to put before this jury some form of implication or
24 argument that because Janssen may have done something like
25 this in the past, that they've done it in this particular

1 case? We're on the same page?

2 MR. MARKETOS: We are on the same page, absolutely,
3 Your Honor. And if you'll note, it's not just in -- cautious
4 with the witness. You're absolutely right that this evidence
5 goes to the -- even before you get into 404(b) land, you know,
6 propensity, absence of mistake, opportunity, plan pattern, the
7 point of this examination -- this investigation was going on
8 while Mr. Mattes started running Tibotec and put this other
9 plan in place for Prezista and Intelence. It goes to their
10 knowledge, and it goes to materiality.

11 THE COURT: I agree. I agree.

12 MR. MARKETOS: So that's all I'm going to get into
13 with him. He knew. Janssen knew, he knew, et cetera. Never
14 are you going to hear me say, You did it before and you did it
15 again. That is --

16 THE COURT: Well, it's going to have to be more than
17 just not saying the words. Right? If you make some
18 implication that to me resonates of that, there will be
19 trouble. Do you agree?

20 MR. MARKETOS: Yeah, I understand. I just wanted to
21 frame this issue because I don't want to get afoul of the
22 Court's ruling, and I don't want to get pulled into a sidebar
23 on it. The issue that we're going to be addressing is
24 knowledge and materiality.

25 THE COURT: I got it. All right.

1 What's the next issue, Mr. Wyatt? Because I wanted to
2 make sure I don't --

3 MR. WYATT: I appreciate that, Your Honor.

4 So related to this line of questioning, I really,
5 again, feel that the issue is sort of the DOJ's role or not in
6 these cases, has been implicated by the questioning yesterday.
7 Mr. Mattes was asked, "And you're aware of the fact that there
8 were allegations brought by whistleblowers about Topamax that
9 resulted in a corporate integrity agreement that Janssen
10 entered into with the federal Government?

11 And I think we're back sort of where we were with the
12 first witness, where there's been an attempt to equate those
13 types of cases with the current one where the Government is
14 not involved. And so we would ask for an instruction at the
15 conclusion of this witness's testimony that kind of combines
16 the two instructions that the Court has given previously but
17 in connection with this testimony.

18 And it would be "You have heard additional testimony
19 referencing Janssen's corporate integrity agreements with the
20 Government. I previously instructed you on the limited
21 purposes for which you may consider those agreements. Since I
22 gave you that instruction, you have also heard that these
23 corporate integrity agreements were reached as a result of
24 allegations in cases brought by whistleblowers. I am now
25 instructing you that the Government was involved in those

1 cases, but as I instructed you previously, the Government is
2 not involved in this case for purposes of this trial."

3 THE COURT: All right. Any objection to that?

4 MR. MARKETOS: Yeah. I do object to that,
5 Your Honor. They're trying to draw a distinction between the
6 cases that were settled that were originally brought by
7 whistleblowers as a -- sorry -- a backdoor way to get the
8 declination.

9 THE COURT: Well, I mean, the counterargument to that
10 is, Look, you are bringing in these prior matters, right, for
11 purposes of knowledge and materiality. So you're making some
12 analogy to that prior conduct, that they are aware of conduct
13 like this. So if we don't say anything and I give no
14 instruction, then do they get confused that maybe the
15 Government's involved in this case?

16 MR. MARKETOS: To say that the Government is not
17 involved would itself be misleading. The Government filed a
18 statement of interest in this case on falsity and materiality.
19 And so -- and we are bringing the case on behalf of the
20 Government. And at the end of the day, if there's a
21 resolution, if there's a jury verdict, if there's a
22 settlement, the Government is going to be involved.

23 So they remain involved; they are just not prosecuting
24 the case themselves. And so this attempt is essentially to
25 say because the Government is not litigating the case, that

1 somehow it's different and less important.

2 THE COURT: Let me ask you this, because I don't have
3 any proposal from Relators: Is there a way to fashion an
4 instruction that walks farther away from some potential
5 implication about Government not intervening in this case?

6 MR. MARKETOS: I'd have to -- that's the first I've
7 seen of the proposal they just referenced, Your Honor. I'd
8 have to get together with Mr. -- with my colleagues and figure
9 it out.

10 THE COURT: All right. I'm not objecting necessarily
11 to providing an instruction, Mr. Wyatt. My concern is the
12 issue raised by Mr. Marketos, which is that getting too close
13 to the line of really putting before the jury that the
14 Government got involved in that case, in the prior case but
15 not this one -- I think some instruction may be appropriate,
16 so I don't disagree with Janssen, but I'm not so comfortable
17 with the language that you proposed. I think there's some
18 language that I think would be -- I think is more prudent,
19 that is a little farther away from that line of the
20 Government's lack of intervention in the case.

21 So that's where I land for now, but I don't have
22 anything else before me. So are you all going to kind of meet
23 and confer on that to try --

24 MR. WYATT: We will, Your Honor.

25 THE COURT: -- to formulate an instruction? If

1 there's still an impasse, I can make the decision. But I at
2 least want to get some proposal from Relators' counsel, or
3 maybe there's some compromise that you'll agree with.

4 But I'm inclined to give some instruction here as a
5 reminder but not specifically the language that you're
6 proposing just yet.

7 Does that make sense?

8 MR. WYATT: Understood, Your Honor. We'll work with
9 them.

10 I do want to clarify one issue about the Government's
11 statement of interest in this case because it's come up a
12 couple of times now.

13 THE COURT: Well, it's not before the jury, right?

14 MR. WYATT: It's not, but also it took no position
15 expressly on the merits. So there's no statement that I'm
16 aware of in this case where the Government said, This is
17 material to us. That's not part of the record.

18 THE COURT: I got it. I understand that.

19 All right. So -- but that's an issue you're putting on
20 the record for me. Okay.

21 MR. WYATT: Yes.

22 THE COURT: Look, for now, I'm tabling this
23 instruction, but let me ask you this: This instruction that
24 you're asking for, is that something that you're asking me to
25 provide not just in the final instructions but after

1 Mr. Mattes's testimony? Or after -- when will the settlement
2 agreement be admitted?

3 MR. MARKETOS: It would be admitted during the course
4 of his testimony.

5 THE COURT: All right. So are you asking for that
6 instruction or some instruction, Mr. Wyatt, at the conclusion
7 of Mr. Mattes's testimony?

8 MR. WYATT: That's correct, Your Honor. We can do it
9 at the start of the afternoon, if I understand the sequence of
10 events planned for today. Number one.

11 But number two, I now have a concern about this coming
12 in with Mr. Mattes, because this settlement that we've been
13 discussing, I believe, is about Risperdal, not about Topamax,
14 and I don't know that he has any knowledge about -- or maybe
15 he does. I don't know. But that's not what the questioning
16 yesterday was about. It wasn't during his tenure at Tibotec.

17 THE COURT: Mr. Marketos?

18 MR. MARKETOS: Well, I'm sorry, Your Honor. The
19 investigation was while he was there, and that's part of why
20 they -- they started doing these compliance steps later on
21 between 2010 when he was there and 2013.

22 There's -- you'll see the ramp-up, and this is what was
23 in Your Honor's limine motion, that they were trying to
24 comply, not just with the 2010 corporate integrity agreement
25 but in 2010, 2011, 2012 before 2013 was --

1 THE COURT: Well, the agreement can come in. I mean,
2 we'll get to this. The agreement is coming in. So whether
3 Mr. Mattes has personal knowledge or can testify to it is a
4 second issue. And we'll talk about that a little bit this
5 morning. But there are two issues here when it comes to
6 admissibility and what a witness can speak on.

7 So for now, I mean, if you want to raise -- if there's
8 an objection, Mr. Klein -- it's your witness, right?

9 MR. KLEIN: Yeah.

10 THE COURT: So if there's an objection on something,
11 then I'll deal with it in realtime. But I'm going to alert
12 you to that there's a difference between whether this document
13 is coming in, which it is, versus whether Mr. Mattes has any
14 personal knowledge of which he can speak to it. But you
15 telling me he has no personal knowledge will not be
16 sufficient.

17 What I would have told you later this morning, but I'll
18 get ahead of myself, is Mr. Marketos or Relators' counsel,
19 whoever has the witness, can ask a witness whether they have
20 knowledge of a particular document. It may be just as
21 relevant to them that a witness has no knowledge of something.

22 So the proffer itself will not prohibit the
23 questioning. But once a witness says, I have no idea what
24 this is, eventually we're going to get to it's been asked and
25 answered.

1 Now, that objection hasn't been made over the last
2 couple of days. I will tell you there have been plenty of
3 occasions where it could have been made. But if you get to a
4 point where you're asking somebody about a document and they
5 say, "I have never seen this in my life. I don't know
6 anything about it. No." And then you're going to take them
7 through eight different pieces of the document, to me it's
8 like beating a dead horse. It's, like, the person's already
9 said they have no idea what this is. They've never seen it in
10 their life. So I think it's clear to a jury that every
11 paragraph of the document will be unknown to that particular
12 witness.

13 It would be different if you're refreshing a witness's
14 recollection. They don't know if they've seen it. So you're
15 trying to alert them to other parts of a document to see
16 whether that shakes something in their head, to alert them to
17 it or to refresh their recollection. But I think that's a
18 separate question.

19 So all right. I've made my ruling on the settlement
20 agreement, but let me just be clear. Now that it's coming in,
21 is there anything else besides the objection that Janssen's
22 made that you're concerned about? Like, the naming of the
23 drug. My understanding is that that's not really an issue
24 anymore, that the parties have come to an agreement that
25 instead of qualifying that it's a drug in a protected class or

1 something like that, a particular drug can be mentioned. Is
2 there anything else like that that we need to redact out of
3 this before it's admitted?

4 MR. WYATT: Let me take another final look at it,
5 Your Honor, and --

6 THE COURT: All right. If there is, why don't you
7 guys confer, but let me be clear about that. I've already
8 ruled that the pieces that are material to the Relators' case
9 that they were intending for this document to come in, those
10 are not going to be redacted. Right?

11 MR. WIRMANI: Understood.

12 THE COURT: That's the specificity of the allegation,
13 the specificity of the payments to the Government, those types
14 of things. But if there's something else in here that really
15 doesn't go to the issue, Mr. Marketos, but gets you what
16 you're looking for and that I've ruled in your favor, then I'd
17 ask you to meet and confer because those redactions might not
18 be in dispute.

19 So that's what I want to say about it.

20 MR. WYATT: At one point -- clarification. Sorry,
21 Your Honor. I think the language I was pointing out
22 previously about the specific off-label indications, the Court
23 suggested perhaps those would be redacted. The Court hasn't
24 ruled that part is in. That's something we can still
25 discuss --

1 THE COURT: Sorry. Which part?

2 MR. WYATT: The issue where it's talking about the
3 specific off-label indications that Risperdal was marketed
4 for.

5 THE COURT: Yeah. I mean, I don't know if that
6 matters as much, Mr. Marketos. This isn't a case about
7 Risperdal. Now, that level of specificity as to what
8 specifically might have been off-label about that drug, I
9 think you can all work out doesn't really move the ball
10 forward for this jury. I think the specificity of, like, the
11 type of off-label, you know, whether it's speaker
12 engagements -- I haven't reviewed this whole document, to be
13 candid with you -- so anything like that I understand I'm
14 allowing in. But if there's some kind of level of specificity
15 that's so tailored to Risperdal that it really isn't relevant
16 to this case, I want you to look at that.

17 MR. MARKETOS: Yes, Your Honor. I think, and I hope
18 not, but I think that they're talking about the fact that it
19 was off-label because it was misrepresenting the safety and
20 efficacy?

21 MR. WYATT: No, no. The actual indications getting
22 into the details -- the parts you want is not what -- that you
23 had highlighted is not what I'm talking about.

24 THE COURT: You'll work it out.

25 With that, what are the other issues we have to talk

1 about this morning?

2 MR. MARKETOS: Nothing, Your Honor. I think you were
3 addressing the issue that we've had with the documents.

4 THE COURT: Yeah. I'm back to where I was, folks.

5 All right. I've got the cases. I've read them. I
6 will tell you, Mr. Marketos, we're just going to have to agree
7 to disagree. To me there's some analysis that the Court has
8 to do. I can't presume with every document that has been
9 produced by Janssen that they're somehow per se admissible.

10 For me, I have to look at -- and I'm just looking at my
11 notes, right, from this morning and last night. When I look
12 at 801, I have to look at, you know, some of the things that
13 would make the document not hearsay. So are they offered
14 against opposing party? Were they made by the party's agent
15 or employee? Was it made during the course of the
16 relationship? Does it relate to a matter within the scope of
17 the agency employment?

18 So I'm not saying you don't have -- you're incorrect in
19 your argument that many of these documents may be admissible.
20 But for me, I'm going to continue to look at each document on
21 a case-by-case basis. That hasn't slowed up the trial
22 significantly. I think the witness testimony has been a
23 little slower than anticipated. But every once in a while, if
24 there's an objection on the exhibit, I'm going to handle those
25 on a case-by-case basis because there may be an argument there

1 that one of those factors does not apply. And Janssen has the
2 ability to do that.

3 The other piece I'll say is even if it's admissible,
4 there is an issue as to whether a witness has personal
5 knowledge to testify to it. But what I've said earlier, and
6 I'm going to repeat this for both counsel, is, either counsel
7 can ask a witness about their knowledge about a document.
8 Right? Because you have to establish to the jury and on the
9 record whether they know about it or not.

10 That's not going to come through a proffer. It's not
11 going to come from, The person's title is this and therefore,
12 they couldn't have had knowledge of a document.

13 You get to ask a witness whether they know something
14 about something or not, but once they've established clearly
15 that they really don't know anything about it, move on because
16 at that point you've established the lack of knowledge.

17 There's no refreshing recollection, and so I think
18 there, there's a redundancy that's been happening we're, like,
19 let's now go through multiple pieces, and that doesn't apply
20 just to Relators' counsel.

21 That's equally applying to the folks at Janssen.
22 You're going to be calling witnesses directly at some point in
23 the trial, and even if you're cross-examining a witness and
24 putting up documents, I'm going to equally apply that theory
25 of the law, that once the witness has established lack of

1 knowledge.

2 That being said, I also want to be clear you get to
3 establish that, you know. You can't just tell me, The witness
4 has no knowledge, Your Honor, we object. Well, I don't know
5 that. The jury hasn't heard anything about that.

6 And like I said, it could be material to either side or
7 relevancy or case or defense, that a witness is saying to a
8 jury under oath they have no idea what this is.

9 So for those reasons, we're back to square one. I'm
10 not telling you that you're prohibited from revisiting this
11 issue, but we've talked about it twice, and neither side has
12 convinced me to go in a particular direction.

13 So I would say -- strongly suggest that this is where
14 I'm likely to rule throughout the trial, that we're going to
15 deal with these documents on a case-by-case basis.

16 I will tell you that I don't think that either side has
17 been -- overly objecting to documents. You guys have come to
18 an agreement on a multitude of exhibits. I've heard no
19 objections on exhibit more times than I've heard objection.

20 So again, I don't think that's a real problem in the
21 trial, and I think it's better for the Court to do that full
22 analysis with each document, because I don't know every
23 document either side is going to present to the Court, and to
24 make that analysis prematurely without putting my eyes on it I
25 think is a mistake.

1 So that's where I land on that.

2 So anything else you all want to put on the record
3 about it, I'm happy to hear, but it won't change my mind.
4 How's that?

5 MR. MARKETOS: Completely understood, Your Honor.
6 And let me just make one point of clarification, if I may, and
7 then I'll...

8 There are documents for which Janssen has not even
9 objected because they are documents on the exhibit list, some
10 of which are even on their exhibit last. They're Janssen
11 documents. They're party admissions. They come in. They're
12 relevant.

13 They're admissible because they're party opponent
14 statements, and they're clearly -- like a compliance document,
15 for instance. It's Janssen's compliance document. It's a
16 deck. It comes in because there's no objection on hearsay.
17 It's a party opponent statement.

18 What they're -- what we've been facing is that they're
19 objecting to the admission of the evidence with that witness
20 who says he doesn't know about it, and those are two different
21 issues. The document is admissible, and then the witness's
22 personal knowledge, he can answer yes or no.

23 THE COURT: Well, I think I just ruled that I
24 somewhat agree with you there because a settlement agreement
25 is coming in, and I think there was an issue as to whether Mr.

1 Mattes could speak to, and that to was a second issue.

2 MR. MARKETOS: Right.

3 THE COURT: That was not an issue of admissibility.
4 It was more of an issue of whether the witness could testify
5 to the document.

6 So I don't -- I think we might be on the same page
7 there, Mr. Marketos, so -- but again, here's what we're going
8 to do.

9 It would be better if you all kind of had a discussion
10 about exhibits the day before and if there's no objection, you
11 could easily move in 15 exhibits. They say no objection, and
12 they're admitted, and we don't have to waste time on every
13 single document.

14 But if that's not going to happen, then every time you
15 move to admit a document, whether from the Relators or
16 Janssen, I always just sit back and wait, because I need to
17 know, Is there an objection to the document? And if so, I
18 have to address it.

19 So I'm not telling you all what to do, but if there
20 really are 15 or 20 documents you intend to use in a
21 particular day or next week, why not just confer? Because
22 your trial time will be much more expeditious if you're just
23 saying, Your Honor, we have an agreement here, we're just
24 going to move in the following 20 exhibits.

25 I say, Any objection. The response is, No, and I say,

1 So admitted.

2 So I leave that to the parties, but I also believe that
3 if you're going to do that now as the Relators' counsel, then
4 you all should be, in good faith, doing that for Janssen as
5 well. That's why I put it to both sides.

6 But you can save a lot of time, but if you're not going
7 to do that, I'm not even going to give you that ruling, like,
8 Oh, this PowerPoint presentation, Your Honor, those are all
9 party opponent statements and they should be admitted.

10 I have no what is in the PowerPoint. There could be
11 something else that's going on in the document. So for me to
12 say this morning, You're right, those are all admitted, I
13 won't entertain an objection from Janssen, I'm not doing that
14 because I have no idea what is in there.

15 And the objection could be something other than this
16 issue about whether it's a statement of a party opponent.
17 That is just one particular issue on an objection which gears
18 with whether a document is hearsay or not.

19 There could be an objection on something that's, you
20 know, overly prejudicial. There could be some other objection
21 that is unrelated to 801 (D) (2) (d).

22 So again I think we need to be careful about saying, If
23 a document is not hearsay, it's a statement of a party
24 opponent, it's admissible, despite the fact that there could
25 be 14 other objections to the admissibility of that document

1 unrelated to whether it's hearsay or not.

2 So do you see my point there?

3 MR. MARKETOS: Absolutely, Your Honor. Heretofore,
4 the objections are --

5 THE COURT: Hereto what?

6 MR. MARKETOS: Heretofore. I just learned that, I
7 just learned that. Do you mind if I use it again?

8 THE COURT: I know, but you're in Jersey. I don't
9 think I've ever used that term in speech or in writing in my
10 life.

11 MR. MARKETOS: What if I use a southern accent?

12 THE COURT: That's fair.

13 MR. MARKETOS: To this point -- to this point the
14 objection has been in each and every case, even for documents
15 that they have not objected to on the witness list, this
16 witness doesn't know about it.

17 THE COURT: I know. I get it, and we've talked about
18 this morning -- and I think Janssen's counsel is listening to
19 what we're saying, and they might want to respond, but I'm
20 saying -- you all hear me, that that's not really going to
21 carry the day.

22 And I think I've addressed that this morning. If a
23 document is admissible, the issue of the witness is a little
24 bit different on a party opponent statement. It's going to be
25 more about, Is this witness going be able to speak about this

1 thing or not.

2 And if they can't, folks, then we're going to have to
3 move on, right? We're not going to ask 20 questions to
4 establish a witness has no knowledge of a document when two or
5 three would be do.

6 I'm not going to stop you at one because I think there
7 are times where a witness might say they know nothing about
8 something, and if you rephrase the question a few different
9 ways, all of a sudden it triggers something.

10 So I'm going to give you all some latitude on that.
11 But we all know eventually when a witness is saying, You can
12 ask me this eight ways to Sunday, I have no clue what you're
13 talking about.

14 So all right. Those were two issues. Do we have
15 anything else we needed to chat about this morning, only
16 because we have a few minutes before the jurors arrive?

17 MR. MARKETOS: Not from Relators counsel.

18 THE COURT: Ms. Brown?

19 MS. BROWN: Your Honor, I do have an update on
20 Dr. Sue, but I'm happy to do it at lunch, if you want to get
21 the jury in. I don't want to hold us up.

22 THE COURT: Well, you don't think we're going to need
23 to deal with that -- well, no, we're not dealing with that
24 this morning. That's for May 30th.

25 MS. BROWN: Correct.

1 THE COURT: Can we talk about that at lunch?

2 MS. BROWN: Absolutely.

3 THE COURT: But I do want to address and resolve that
4 issue, folks, today.

5 MS. BROWN: Yep, sure.

6 THE COURT: And can I ask you one other thing,
7 Ms. Brown? The information you have, have you already met and
8 conferred with Relators' counsel?

9 MS. BROWN: No, but I'll do that, Your Honor.

10 THE COURT: So let's do that first because I don't
11 even know --

12 MS. BROWN: Sure.

13 THE COURT: -- if there's an issue yet before me. So
14 all right, folks. I'm going to give you that time, but lunch
15 break then, we're going to use five minutes or so before I
16 dismiss you or -- I don't know if you're starting, we'll deal
17 with it, you know, five minutes before we get the jury back.

18 I prefer to address that issue before I adjourn you all
19 for lunch.

20 Also remember, we're on a much tighter schedule, folks,
21 so I don't know if you're brown bagging it or what you're all
22 doing, but the jurors are ready to go in 30 minutes, and I'm
23 going to ask you all to continue to do that too so that we're
24 not cutting more into the time that you all need, and we're
25 adjusting the schedule.

1 MR. MARKETOS: Yes, Your Honor. I lost facial
2 awareness yesterday. What -- what -- what is the Court's
3 preferred schedule on stretch break and lunch, what timing now
4 that we're going to five, nine to --

5 THE COURT: I have no idea because it came up
6 yesterday for the first time. So after the lunch break, we're
7 going to five o'clock. That's a long span.

8 So what I'm going to do is around, you know, 2:30,
9 3:00, around the same time, I'm going to give them that break.
10 If they want another break, I'm going to give it.

11 One thing I didn't say yesterday that I should have is
12 someone at counsel's table might need that second break, so
13 you all just have to just ask, Your Honor, do you mind if we
14 take a brief recess or something here, whatever you want to
15 do, and I'll make that another stretch break.

16 So I'm kind of using the jury as my guide, but that
17 doesn't mean that we can't take a second break in the
18 afternoon, especially on a long stretch. And you guys are
19 doing all the work in the well.

20 So if somebody needs a break outside, let me know.
21 Unless you're all telling me collectively, Why don't we
22 establish two short breaks so that we just do it. I just
23 worry that the jury yesterday was like, We don't need it.

24 MR. MARKETOS: Yeah, I know they didn't. I get it.
25 I get it completely. I had actually forgotten yesterday that

1 we had taken a break in the afternoon by the time we got
2 there. So I appreciate it, Your Honor.

3 If we can just say, Is now a good time for a break?

4 THE COURT: I'll do that for the first break, and
5 then the second one, I guess, is discretionary. How is that?

6 MR. MARKETOS: That will be fine, Your Honor.

7 THE COURT: So we may have two. We may have one.
8 Ms. Brown, any objection to that?

9 MS. BROWN: Not at all.

10 THE COURT: All right. Anything else substantive
11 other than the witness issue that we're tabling?

12 MR. MARKETOS: No, Your Honor.

13 MS. BROWN: No, Your Honor.

14 THE COURT: All right. So I have nothing on my
15 plate. I just want to make sure: Is there anything before me
16 that I haven't addressed?

17 MR. MARKETOS: No, Your Honor.

18 THE COURT: All right. So then, look, you're -- give
19 me a few minutes, if you want to collect yourselves. You
20 want -- you want five minutes and then I'll make sure the
21 jury's ready to go?

22 MR. MARKETOS: That would be great, Your Honor.

23 THE COURT: Let's do that. We're in recess for five
24 minutes. Everybody remain seated.

25 (A short recess occurred.)

—MATTES - DIRECT - MARKETOS—

1 THE DEPUTY COURT CLERK: Remain seated.

2 (Jury enters courtroom.)

3 THE DEPUTY COURT CLERK: Please rise.

4 THE COURT: Folks, everybody have a seat. Members of
5 the jury, welcome back for another day.

6 We're going to continue with witness testimony. You
7 may have noticed Liz is in here today without Kim, so we're
8 just changing faces on you. I think Kim will be back later on
9 this afternoon, but, you know, everybody pitches in when
10 things are going on, so I just wanted to thank Liz for her
11 help this morning.

12 Mr. Marketos, if you're ready to proceed, we can
13 continue with the examination. And, Mr. Mattes, just as a
14 reminder, you'll still under oath from yesterday.

15 THE WITNESS: Yes, sir.

16 THE COURT: All right.

17 MR. MARKETOS: Thank you, Your Honor.

18 (DIRECT EXAMINATION BY MR. MARKETOS:)

19 Q. Mr. Mattes, good morning, sir.

20 A. Good morning.

21 Q. We left off yesterday and we were talking about a
22 corporate integrity agreement that had been entered into with
23 Ortho-McNeil, Janssen, and the federal government.

24 Do you recall that discussion?

25 A. Yes.

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1 Q. The investigation that led to that agreement with the
2 Government actually began a few years before 2010.

3 Do you recall that?

4 A. Yes.

5 Q. You actually yourself, were you involved in that
6 investigation, sir?

7 A. Not directly.

8 Q. All right.

9 How about indirectly?

10 A. I might -- I don't know what indirectly really means but
11 not directly. Might have heard about it, but I was never
12 questioned or -- that I recall.

13 Q. Okay, sir.

14 And in fairness, sir, at the time that you were over at
15 Janssen and you were operating to get Prezista and Intelence
16 into the marketplace, you were aware about that investigation
17 that led to the corporate integrity agreement.

18 Correct?

19 A. Yes.

20 Q. All right.

21 And you were aware of the fact that speaker programs or
22 inducement to doctors were an issue for the Government.

23 Fair?

24 A. I don't recall that that was the specific issue, but I
25 there was an investigation.

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1 Q. And you are aware of the fact that off-label marketing of
2 pharmaceutical drugs was something that the Government was
3 investigating.

4 Right, sir?

5 A. Yes.

6 Q. You understood that the Government took those matters
7 very seriously at the time.

8 Right?

9 A. Yes.

10 Q. And that the Government ultimately, if it discovered that
11 there was off-label marketing that's taking place by a
12 pharmaceutical company and Medicare or Medicaid has reimbursed
13 for those drugs, it will demand that money back to the
14 Government.

15 Right, sir?

16 A. That is -- that is one resolution.

17 Q. Yeah.

18 You knew that at the time that you were operating this
19 Janssen, Tibotec selling Prezista and Intelence --

20 A. Yes.

21 Q. -- fair?

22 All right?

23 And, sir, your compliance department, that was a
24 department that also reported to you at Janssen.

25 Right?

—MATTES - DIRECT - MARKETOS—

1 A. On a dotted line basis, yes.

2 Q. So the compliance department, did that include
3 individuals like Ms. Catherine Kaucher?

4 A. I don't remember Catherine, but she was part of the
5 group.

6 Q. All right.

7 And the compliance department within Johnson & Johnson
8 and at Janssen disseminated information to the employees of
9 Janssen to explain to them that off-label marketing was
10 prohibited.

11 Do you recall that?

12 A. Yes.

13 Q. And if we take a look at RX 275, this is also Defendants'
14 Exhibit 229, see if you can identify that when it comes --
15 when or if it comes up, Mr. Mattes. It appears we've got an
16 issue with the screen.

17 MR. MARKETOS: Your Honor, it looks like the court
18 system may be done. Can we take a quick break? I don't think
19 it's working.

20 THE COURT: You guys want to work on it?

21 MR. MARKETOS: Yes, if you don't mind.

22 THE COURT: Oh, we're good.

23 MR. MARKETOS: Oh, there we go.

24 THE COURT: Every time you ask me, it's my voice that
25 fixes machines. I think they get scared of me.

—MATTES - DIRECT - MARKETOS—

1 THE WITNESS: Keep talking. Keep talking. Don't
2 stop talking.

3 MR. MARKETOS: Just for the witness, if you could,
4 Ms. Johnson, and if it doesn't work, please let me know,
5 and --

6 THE COURT: The witness has it --

7 MR. MARKETOS: Okay, thank you.

8 THE COURT: -- because I can see it.

9 MR. MARKETOS: There we go.

10 BY MR. MARKETOS:

11 Q. All right.

12 What I'm showing you, sir, is a compliance training
13 document from Janssen that was actually shown by Janssen's
14 counsel on the ELMO to Ms. Brancaccio.

15 MR. MARKETOS: This is RX 275 and DX 229. We'd offer
16 this exhibit.

17 MR. KLEIN: No objection with the appropriate
18 redactions.

19 THE COURT: All right. And those redactions have
20 already been made?

21 MR. MARKETOS: I'm not sure what they're referring
22 to, Your Honor, but what I can say is that we won't be getting
23 into any of that.

24 MR. KLEIN: Okay.

25 THE COURT: Let's sidebar because I just want to make

—MATTES - DIRECT - MARKETOS—

1 sure I'm clear before I let a document get published.

2 (Sidebar begins at 9:12 a.m.)

3 MR. KLEIN: Your Honor, the only thing we're worried
4 about is I think there's a reference to settlement amounts,
5 monetary amounts in that --

6 THE COURT: Oh --

7 MR. KLEIN: -- in that document.

8 THE COURT: Oh, we're good.

9 MR. KLEIN: So if those are redacted, then we have no
10 objection.

11 THE COURT: We're good.

12 (Sidebar was concluded at 9:12 a.m.)

13 (Open court.)

14 MR. MARKETOS: All right.

15 THE COURT: You may proceed.

16 MR. MARKETOS: Thank you, Your Honor. 275 is
17 admitted?

18 THE COURT: Yes.

19 MR. MARKETOS: Thank you.

20 (Relators' Exhibit 275 in evidence.)

21 BY MR. MARKETOS:

22 Q. If we turn to page 6, sir, this is a reference to
23 regulatory sales training, sales leadership and medical
24 affairs.

25 Do you see that?

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1 A. Yes.

2 Q. And if we take a look at the next slide, what was being
3 explained to Janssen and its employees was why the healthcare
4 environment in this industry is so heavily regulated.

5 Do you see that?

6 A. Yes.

7 Q. Did you attend any of these compliance training courses?

8 A. I -- I don't recall attending these. I don't recall --

9 Q. What's that?

10 A. I don't recall attending.

11 Q. Okay.

12 A. I might have, but I don't recall.

13 Q. You are aware of the fact that the compliance department
14 instructed Janssen employees that the healthcare industry is
15 unique, has an impact on health and safety of patients.

16 Right, sir?

17 A. That's absolutely correct.

18 Q. And that the Government reimburses a large percentage of
19 all prescription products, including Medicare and Medicaid.

20 Right?

21 A. Yes.

22 Q. The Government does not want to cover the cost of
23 prescription products when there are violations of the
24 Anti-Kickback Statute or the False Claims Act.

25 Correct?

—MATTES - DIRECT - MARKETOS—

1 A. Yes.

2 Q. Those, of course, are the two claims that Relators have
3 filed in this case.

4 Do you understand that?

5 A. Yes.

6 Q. The Anti-Kickback Statute, of course, relating to the
7 payment of -- or inducement of a physician in order to
8 prescribe Janssen's drugs, and the False Claims Act relating
9 to off-label marketing.

10 Do you understand that?

11 A. Yes, I do.

12 Q. And according to Johnson & Johnson's credo, they wanted
13 to ensure that business was conducted in an ethical manner
14 within the law.

15 Correct?

16 A. Absolutely.

17 Q. And if we look at the next page -- yeah, if we look at
18 the next page.

19 MR. MARKETOS: Thank you.

20 BY MR. MARKETOS:

21 Q. The noncompliance, Janssen's employees were told, could
22 result in fines, corporate integrity agreements, and exclusion
23 from doing business with the Government, specifically Medicare
24 and Medicaid.

25 Right, sir?

MATTES - DIRECT - MARKETOS

1 A. Yes.

2 Q. Serious business.

3 Do you agree?

4 A. Yes.

5 MR. MARKETOS: Now, if we take a look at Relators'
6 Exhibit 423, which is evidence. This of course was the
7 corporate integrity agreement. Oh, yeah. Thank you. Let me
8 turn back to page 7 of exhibit 275. I actually want to take a
9 look at the notes down below.

10 BY MR. MARKETOS:

11 Q. If we take a look at the notes down below of the slide,
12 what was being taught to Janssen employees was that -- was
13 that "the pharmaceutical industry is heavily regulated and
14 that Government does not want to cover the cost of
15 prescription products when there's a violation of the
16 Anti-Kickback Statute or the exchange of anything of value in
17 return for business."

18 Right, sir?

19 A. Yes, we --

20 Q. And that includes --

21 A. -- discussed that.

22 Q. -- the False Claims Act, selling off-label or
23 misrepresenting one of Janssen's products.

24 Correct?

25 A. Yes.

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1 Q. And there are examples given at the bottom.

2 Do you see that?

3 A. Examples of how much of our products are --

4 Q. Give examples of our products' reimbursement rate.

5 A. Yes, yes.

6 Q. Do you see that?

7 A. Yes.

8 Q. The point being, sir, if there are products that are
9 being sold for reimbursement by Medicare and Medicaid and it
10 turns out that those were sold in violation of the law, the
11 Government is going to come back and get its money.

12 A. Yes.

13 Q. If we take a look Exhibit RX-1624.

14 Were you -- let me ask you this, sir. You're aware of
15 the fact that after 2010, there was a second investigation of
16 Janssen by the Government relating to whistleblower
17 allegations.

18 Do you recall that?

19 A. No, I don't.

20 Q. Okay.

21 Did you leave Janssen before you learned about an
22 investigation by the Government after specific allegations
23 were brought by a separate whistleblowers relating to a
24 different drug?

25 A. So you're saying in 2010 that began?

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1 Q. Yes, sir.

2 There was a -- and the jury has heard there was a 2010
3 corporate integrity agreement that was entered into. We just
4 discussed that.

5 Right?

6 A. Yes.

7 Q. There was a 2013 one, three years later, that extended
8 for another five years until 2018.

9 A. Uh-huh.

10 Q. Are you aware of any of those facts?

11 A. No.

12 Q. Okay.

13 So during the time period in 2010 and when you left
14 shortly in 2011, you went on to other ventures.

15 Is that fair?

16 A. After leaving Johnson & Johnson, yes.

17 Q. Okay.

18 You went on to other ventures. During that time period
19 between 2010 when the corporate integrity agreement was
20 entered the first time and when you left Janssen, you weren't
21 made aware of further investigations that the Government was
22 conducting with respect to another whistleblower lawsuit?

23 A. I don't believe so. I don't remember being involved.

24 Q. All right. Fair enough, sir.

25 MR. MARKETOS: Take a look at Relators' Exhibit 1624

MATTES - DIRECT - MARKETOS

1 for the witness.

2 Your Honor, this is the 2013 settlement agreement. We
3 offer this exhibit.

4 MR. KLEIN: Objection, Your Honor. He just testified
5 he doesn't know anything about it.

6 THE COURT: Well, it's going to be admitted. We just
7 talked about that earlier this morning. But the last response
8 was "I don't believe so. I don't remember being involved."

9 So I'm going allow the witness to look at the document
10 and see if that refreshes anything. So for now, I'm going to
11 overrule the objection.

12 Mr. Marketos, you can continue, and we'll see where
13 that goes.

14 MR. MARKETOS: Thank you.

15 If we take a look -- you can publish this to the jury.

16 BY MR. MARKETOS:

17 Q. If we take a look at this document, this was a settlement
18 agreement between Janssen Pharmaceuticals and the Office of
19 the Inspector General of the Department of Health and Human
20 Services and a number of other Government agencies.

21 Do you see that, sir?

22 A. Yes.

23 Q. The date of this document, I can represent to you, sir,
24 is 2013, some time after you left Janssen.

25 A. Thank you. Yes.

MATTES - DIRECT - MARKETOS

1 Q. But was it your understanding at any time that the
2 allegations that led to this resolution with the Government
3 were being investigated while you were still the president?

4 A. I do not recall.

5 Q. Do you recall allegations --

6 MR. MARKETOS: If we take a look at page 4, please.

7 We'll go to the paragraph H. Okay. Thank you.

8 BY MR. MARKETOS:

9 Q. Do you recall allegations relating to the promotion and
10 use of Invega for conditions for which it was not approved
11 safe and effective by the Food and Drug Administration?

12 A. I don't even remember what Invega --

13 Q. You don't remember Invega?

14 A. No.

15 Q. All right.

16 And specifically that there were false and misleading
17 statements allegedly made about that drug in the marketplace.

18 A. I don't recall that.

19 Q. Okay.

20 So you have no knowledge of the allegations relating to
21 Risperdal either.

22 Is that right?

23 A. I don't recall -- I have -- I have no knowledge.

24 Q. All right. Fair enough, sir.

25 So looking at this document does not refresh your

—MATTES - DIRECT - MARKETOS—

1 recollection about those allegations?

2 A. Certainly I know Risperdal. I don't remember what Invega
3 was.

4 Q. Let me stop there. I don't want to talk at length about
5 the drug Risperdal. I'm really focusing on whether you are
6 aware --

7 A. Okay.

8 Q. -- there were allegations of off-label use and violations
9 of the Anti-Kickback Statute, paying inducement to doctors to
10 sell that drug.

11 A. Thank you for the clarification.

12 No.

13 Q. And do you recall that that, in fact, investigation was
14 taking place while you were still at Janssen?

15 A. I don't recall that.

16 Q. All right. Thank you, sir.

17 I'd like to turn your attention, sir, to the
18 forecasting that was actually taking place for Prezista and
19 Intelence while you were still the president at Janssen.

20 All right, sir?

21 A. Yes.

22 MR. MARKETOS: Let's take a look at RX-1776. This is
23 an email, and you're on the email thread. You can take a look
24 at 1776.

25 BY MR. MARKETOS:

—MATTES - DIRECT - MARKETOS—

1 Q. This is a POA 1 objectives email that was sent to you by
2 Mr. Iacobellis that you ultimately responded to.

3 Do you see that?

4 A. Yes.

5 Q. All right.

6 MR. MARKETOS: We offer Relators' 1624. Excuse me.
7 1776.

8 MR. KLEIN: No objection, Your Honor.

9 THE COURT: So admitted.

10 MR. MARKETOS: Thank you.

11 (Relators' Exhibit 1776 in evidence.)

12 THE WITNESS: Could you enlarge the document, please.

13 MR. MARKETOS: I'm sorry, sir?

14 THE WITNESS: Could you enlarge the document.

15 MR. MARKETOS: Sure, absolutely. I'll enlarge it.

16 If you can turn to page 2 of the attachment.

17 BY MR. MARKETOS:

18 Q. There's a department do's and don't's.

19 A. Thank you.

20 Q. All right.

21 There's a reference here from you, sir, that says, "I
22 want to remind you of the expectation I have for you."

23 Can you see that?

24 A. Let me find that, please.

25 Q. Sure.

MATTES - DIRECT - MARKETOS

1 A. What am I looking for again?

2 Q. Let's turn to the next page.

3 A. Okay.

4 Q. Do you remember sending this?

5 A. No, I don't remember sending this.

6 Q. Fair enough.

7 If we take a look at the next page, there's a reference
8 to you wanting to remind your employees of the expectations
9 you have for them. And you actually state, "For the sales
10 organization, it's imperative they realize the goal of driving
11 broader audience penetration of Prezista."

12 A. Okay.

13 Q. So do you recall, sir, wanting to drive broader audience
14 penetration of Prezista in January of 2007?

15 A. As I read this -- I know I'm not answering your question.
16 I'll answer the question yes, broader audience penetration
17 means more users.

18 Q. I understand.

19 More users of the drug.

20 A. Correct.

21 Q. The goal was to drive more users.

22 A. Get more -- yes. Get more utilization of the product.

23 Q. Okay, sir.

24 MR. MARKETOS: If we take a look at Exhibit 1778.

25 Excuse me. 1777.

MATTES - DIRECT - MARKETOS

1 BY MR. MARKETOS:

2 Q. There's a scenario that was provided to you by Mr. -- how
3 do you -- is it Francois?

4 A. Francois, yes.

5 Q. All right.

6 What was Francois doing? What was his job?

7 A. So at that time he was the vice president of sales and
8 marketing. He left shortly into post-launch.

9 Q. All right.

10 We can see there's an attachment, 1777, and Francois
11 was sending two different scenarios showing forecasting for
12 the growth of this drug in the marketplace.

13 Do you see that on Relators' Trial Exhibit 1777?

14 A. I see the graph, yes.

15 Q. All right.

16 MR. MARKETOS: We'd offer 1777.

17 MR. KLEIN: No objection, Your Honor.

18 THE COURT: So admitted.

19 (Relators' Exhibit 1777 in evidence.)

20 BY MR. MARKETOS:

21 Q. What we can see here, sir, is that as of 2006, Janssen's
22 original forecast for the sales of Prezista had been adjusted
23 downward from \$45 million to \$22 million for that year.

24 Correct?

25 A. I don't remember the specific numbers, but they were

MATTES - DIRECT - MARKETOS

1 definitely adjusted down.

2 Q. They were adjusted down after it was a bad start to the
3 sales process.

4 Fair?

5 A. I don't like the word "bad," but it definitely did not
6 reach the original forecast.

7 Q. You missed it by 50 percent.

8 A. Yeah.

9 Q. That was bad.

10 A. Your word, not mine.

11 Q. Okay.

12 It was not good. Is that fair?

13 A. Disappointing.

14 Q. Okay. Disappointing.

15 What was being projected for 2007, nonetheless, was
16 \$132 million in sales of Prezista.

17 Correct?

18 A. Again, I don't recall the specific number. Please -- and
19 I don't remember exactly where we landed on that year's
20 forecast. According to the slide, it would appear that that's
21 what's being suggested.

22 Q. All right, sir.

23 And those were forecasts that were based on getting out
24 in the marketplace and capturing more sales.

25 Fair?

—MATTES - DIRECT - MARKETOS—

1 A. Getting more on-label use from users, yes. Prescribers.

2 Q. Take a look at 1779. This is the other attachment.

3 There's a different scenario.

4 MR. MARKETOS: Thank you.

5 BY MS. MARKETOS:

6 Q. Do you see there's a different scenario here in

7 Plaintiffs' Trial Exhibit 1779 -- Relators' 1779?

8 A. The same numbers are there. What's different about this?

9 Q. They are the same numbers. It's a different scenario, as
10 you can see from the chart.

11 Do you see the chart for now, sir?

12 A. Yes.

13 MR. MARKETOS: We offer 1779.

14 MR. KLEIN: No objection, Your Honor.

15 THE COURT: So admitted.

16 (Relators' Exhibit 1779 in evidence.)

17 BY MR. MARKETOS:

18 Q. 1779 has a different scenario where there's a faster ramp
19 in order to accomplish \$132 million.

20 Do you see that?

21 A. Yeah. I need to see the other slide side by side, but I
22 take your word for it.

23 Q. Do you recall at the beginning of 2007 that it was
24 Janssen's intent to ramp up sales?

25 A. Yes.

MATTES - DIRECT - MARKETOS

1 Q. All right.

2 And to be clear, sir, you were hoping to accomplish
3 five times as many sales for the calendar year 2007 as you had
4 for a part of 2006.

5 Correct?

6 A. This is a presentation that was made to probably suggest
7 to me what the sales number could be. I don't recall where we
8 landed, but my conjecture, only because I don't remember
9 specifically, that Mr. Lillian thought -- was suggesting this
10 could be where we landed in 2007.

11 Q. All right, sir.

12 It might have been higher or lower. I'm really
13 specifically talking about what was being proposed in these
14 scenarios.

15 Is that fair?

16 A. Sorry. Say again. Proposed?

17 Q. What was being proposed in these two scenarios.

18 A. By -- proposed, yes.

19 Q. Proposed. Thank you.

20 MR. MARKETOS: We'll take a look at the actual
21 forecasts. RX-1780.

22 While we're pulling that up for you, sir, we offer
23 RX-1780.

24 MR. KLEIN: No objection, Your Honor.

25 THE COURT: All right. So admitted.

MATTES - DIRECT - MARKETOS

1 (Relators' Exhibit 1780 in evidence.)

2 BY MR. MARKETOS:

3 Q. Before we pull that up, sir, we talked a little bit
4 yesterday about how when forecasts were missed in 2006 there
5 was a bit of fork-in-the-road opportunity.

6 And what I mean by that is there was an opportunity for
7 you to go back to your board and tell the board that the
8 strategy analysis for the initial forecast that you had put
9 together for Janssen for Prezista was in error.

10 Do you recall that?

11 A. Do I recall saying that to my board?

12 Q. Well, we'll go step by step.

13 Do you recall that discussion that we had yesterday?

14 A. Specific discussion? I'm sure it was discussed
15 frequently.

16 Q. Okay.

17 Did you ever go back to your board and tell the board
18 that there had been mistakes with respect to the strategy in
19 selling Prezista?

20 A. I just want to make sure. When you say "board," who are
21 we talking about?

22 Q. Your board.

23 A. My board of, like, direct reports and people that --

24 Q. The board you reported to.

25 A. Oh, that I reported to. I didn't report to a board. I

MATTES - DIRECT - MARKETOS

1 reported to an individual.

2 Q. Okay.

3 A. And I -- again, I'm not recalling specifically. I think
4 the mistake was not in the strategy. I think if there was a
5 mistake at all, it was in the forecast.

6 Q. All right.

7 Let me make sure I understand.

8 A. Sure.

9 Q. Whether the mistake was in the strategy for how to
10 approach the marketplace or the forecast for sales, did you
11 ever go to the person you report to and tell them there had
12 been a mistake in either one of those things?

13 A. I would have reported to them that the outcome was
14 different from the original expectation.

15 Q. Yes, sir, but --

16 A. I don't recall -- I would -- I don't recall using the
17 word "mistake."

18 Q. And what I'm getting at here, sir, is there can be a
19 number of reasons why a company like Janssen may have missed
20 its forecasted sales. One could be the poor performance of
21 the sales force itself.

22 True?

23 A. Possibly.

24 Q. Another could be a mistake in the strategy of the
25 executives that was implemented for the sales force.

MATTES - DIRECT - MARKETOS

1 A. Possibly.

2 Q. Did you ever report that it was a mistake from the
3 executives in strategy to the people you reported to?

4 A. I don't believe I did. If you want to know what I
5 probably said, I would be happy to answer that.

6 Q. Let's take a look at Exhibit 1780. I'm going to turn
7 your attention to a discussion that began from you to
8 Ms. McHugh, Julie McHugh, and this is on March 22nd of 2007.

9 Do you see that at the very bottom?

10 You say "forecast review. Here's the data I referenced
11 this morning with some expanded detail --

12 A. Yes.

13 Q. -- on depth and breadth. "

14 A. I'm sorry. Yes.

15 Q. Thank you.

16 Then there's a response, Ms. McHugh writes to
17 Mr. Scodari, and then at the end of the day, Ms. McHugh says,
18 "Joe, as you may recall from our meeting at the end of
19 February, I signaled that our demand for performance for
20 Prezista is falling short of BP target."

21 Do you see that?

22 A. Yes.

23 Q. All right.

24 And then it says, "We believe the demand shortfall is
25 attributable to overcalling the size of the market line in

MATTES - DIRECT - MARKETOS

1 lines 3 plus."

2 Do you see that?

3 A. Yes, I do.

4 Q. What Janssen's -- what your colleagues were saying was
5 that there had been a strategic error in making the forecast
6 because the demand had been overestimated for a small segment
7 of the HIV population.

8 Correct?

9 A. That is a way -- that is an acceptable way to define
10 that. I would define it a little bit differently, but I think
11 it's -- for understanding, I would -- if you want me to
12 clarify. Well, if not, I won't.

13 Q. How to accurately characterize what was being discussed
14 here.

15 A. Yes. I think you did.

16 Q. Thank you, sir.

17 And then if we take a look at the response from you to
18 Mr. Gossett, at the top you say, "Mark, confidential. Please
19 take a look at the email exchange below. Joe has expressed
20 concern about lowering the target. Please start the
21 calculation of the metrics at \$95 million."

22 Do you see that?

23 A. Yes, I do.

24 Q. "And discuss confidentially with them."

25 Do you see that?

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1 A. Yes, I do.

2 Q. What you wanted to keep confidential, of course, was the
3 discussion about the reason why the forecast had been missed.

4 Is that fair?

5 A. No. I would disagree with you there.

6 Q. All right.

7 A. I believe, again, many, many years ago, I believe that
8 before I wanted to go public with any calculations that we
9 were doing, I wanted to feel comfortable with the logic behind
10 it and have my team work on it before we all agreed to move
11 forward with it.

12 Q. All right.

13 Let's take a look at Relators' Exhibit 308, sir. And
14 this is in evidence already. This is a Tibotec
15 Therapeutics -- that's Janssen, right?

16 I'm sorry to reiterate.

17 A. Yes.

18 Q. I just want to make sure we are still talking about the
19 same company.

20 A. Yes. Yes. Yes, sir.

21 Q. And monthly performance report. This is a CAT review
22 dated January 28, 2008.

23 Right, sir?

24 A. It appears to be.

25 Q. And it was prepared by the business analytics department.

MATTES - DIRECT - MARKETOS

1 Do you see that?

2 A. Yes.

3 Q. And if we take a look at Slide 8, the forecast for the
4 year 2007, it turned out, was 106 million.

5 Do you see that?

6 A. Yes.

7 Q. All right.

8 So we know it went from 23 million forecast in 2006 --
9 that was actually attained -- to 106 million in 2007.

10 Correct?

11 A. Again, I just want to be sure. I -- I don't remember
12 what the final target was for 2007. I don't know if this is a
13 declaration that this is the number we agreed to.

14 Q. Fair enough, sir. Let me remind you of the date of the
15 exhibit, okay?

16 This is a January 28, 2008 document.

17 A. Aw, okay. Thank you.

18 Q. So it's a January 28, 2008 document, looking back on --

19 A. That's helpful, thank you.

20 Q. -- back on the forecast for the prior year, and you can
21 see that it was \$106 million for that year.

22 Do you see that?

23 A. Yes.

24 Q. And there was, as I understand it, a slight miss of that
25 forecast, and \$78 million was attained.

MATTES - DIRECT - MARKETOS

1 Is that fair?

2 A. This would have been where we're going to end '07?

3 Q. Yes, sir. See at the top it says --

4 A. Yes. Yes.

5 Q. Sorry. And, Mr. Mattes, I really apologize for this.

6 You have to make sure not to interrupt for the court reporter.

7 Okay?

8 A. My apologies as well.

9 Q. My apologies.

10 We're looking at Prezista performance through

11 December 31, 2007.

12 Do you see that?

13 A. Yes.

14 Q. Okay.

15 In the second year, you missed your sales targets

16 again.

17 Right?

18 A. If these were the targets, it was missed, yes.

19 Q. If we take a look at Slide 8.

20 A. This is Slide 8?

21 Q. Yes. There's a reference down at the bottom left to the

22 E through H switch share.

23 Do you see that?

24 A. Yes.

25 Q. And you were tracking switches of patients in those

MATTES - DIRECT - MARKETOS

1 patient segments in order to attain forecast.

2 Do you see that?

3 A. Yes.

4 Q. And just to be clear, sir, there was a percentage of
5 targets. There was a targeted percentage of switches of
6 patients from the segments E, F, G, and H in the forecast for
7 2007.

8 Correct?

9 A. Yes.

10 Q. All right.

11 And H was on-label.

12 Correct?

13 A. I don't recall what E to H -- what was or wasn't
14 on-label, so. . .

15 Q. All right.

16 You don't know if segment E was off-label, segment --

17 A. Not --

18 Q. Sorry, Mr. Mattes --

19 A. Yes, I did it again.

20 Q. That's all right, sir.

21 You don't remember if segments E, F, and parts of
22 segment G were off-label?

23 A. Not 17 years later, no. If you want to refresh
24 my memory, I'd be happy to --

25 Q. Fair enough, sir.

MATTES - DIRECT - MARKETOS

1 Let's take a look at Slide 19. There was a reference
2 to QD dosing. This is for Prezista.

3 If we take a look at the bottom here, "Prezista
4 off-label 900 milligram QD use continues to grow."

5 Do you see that?

6 A. Yes.

7 Q. And there were open questions, What can we impact?" at
8 the bottom.

9 Do you see that?

10 A. Yes.

11 Q. "And how much is QD in naive?"

12 Do you see that?

13 A. Yes.

14 Q. All right.

15 Just to be clear, as of 2007, Prezista was not allowed
16 to be marketed or promoted to the naive segment of the HIV
17 population.

18 Fair?

19 A. Yes. Fair.

20 Q. Take a look at Slide 20. There's a reference here, sir,
21 to medical information requests around QD dosing and naive use
22 continuing to increase.

23 Do you see that?

24 A. Yes.

25 Q. You understand it's the allegations of the Relators in

—MATTES - DIRECT - MARKETOS—

1 this case that during the time period 2006, 2007, and 2008,
2 before there was a change in Prezista's label, that they were
3 marketing the drug to naive patients?

4 A. That's the allegation, yes.

5 Q. Yes, sir.

6 There was an increase in medical information requests
7 around naive use. It's actually reflected in a bar chart
8 here.

9 Do you see that?

10 A. Yeah. I'm -- I'm trying to understand what I'm looking
11 at.

12 Q. All right.

13 A. Give me -- give me one second, please.

14 Q. Sure.

15 A. Which is the QD? Oh, I see it. The naive went to a
16 1 percent. Okay. Yes, sir.

17 Q. Medical information requests around QD dosing in naive is
18 what you were tracking.

19 Right?

20 A. Yes. And I don't know what -- what letter E is -- naive
21 or once a day.

22 Q. Okay, sir.

23 Let's turn to Slide 53.

24 A. Big deck.

25 Q. Slide 53, what we see in this slide is that the naive

—MATTES - DIRECT - MARKETOS—

1 share -- Prezista naive had grown by 7 percent in the year
2 2007.

3 Right?

4 A. Yes.

5 Q. And we know -- we can tell -- you can tell us not --
6 promoting into the naive segment would have been off-label
7 promotion.

8 Fair?

9 A. If we promoted to use the drug in naive patients --

10 Q. Yes, sir.

11 A. -- that would be off-label.

12 Q. All right.

13 So if there was promotion by Janssen to the segment of
14 the population that had grown in 2007, the naive segment, that
15 would have been off-label?

16 A. Yes, it would have been off-label.

17 Q. Take a look at Exhibit RX 1783. It's an email from
18 Ms. O'Reilly to you, sir.

19 MR. MARKETOS: And we'd offer 1783, Your Honor.

20 MR. KLEIN: Sorry, Your Honor. It doesn't appear
21 that he's on the email.

22 THE COURT: I know.

23 MR. KLEIN: So we would object on foundation grounds,
24 unless Mr. Marketos can clarify.

25 BY MR. MARKETOS:

—MATTES - DIRECT - MARKETOS—

1 Q. This is an email from Ms. O'Reilly to Michael Genus and
2 Mark Gossett and Ben Kozub.

3 Do you see that, sir?

4 A. Yes.

5 MR. MARKETOS: If we take a look down at the bottom.

6 Can you go down, please.

7 BY MR. MARKETOS:

8 Q. There's an attachment, "executive summary market
9 overview."

10 Do you see that, sir?

11 A. Yes.

12 Q. And see the attachment, "DDP Mattes, first pass"?

13 A. Yes, but again this wasn't sent to me, but I see the
14 title.

15 Q. I'm really asking about the attachment, sir.

16 So there's a document that you made the first pass of
17 that's attached to this email.

18 Do you see it?

19 A. Attached please find two sections for input. Where does
20 it say I made it first?

21 THE COURT: Mr. Mattes, you've got to answer the
22 question that you are being asked. You don't get to ask
23 questions from the witness stand. I don't want to tell you
24 that again.

25 THE WITNESS: All right.

MATTES - DIRECT - MARKETOS

1 BY MR. MARKETOS:

2 Q. Do you see both the attachment file names, sir?

3 A. Yes.

4 Q. "DP Mattes, first pass"?

5 A. Yes.

6 Q. All right.

7 MR. MARKETOS: We'd offer 1783, Your Honor.

8 MR. KLEIN: I think they can show it to him and see
9 if --

10 THE COURT: Just give me the objection.

11 MR. KLEIN: Objection --

12 THE COURT: Overruled.

13 MR. KLEIN: -- foundation.

14 THE COURT: All right.

15 BY MR. MARKETOS:

16 Q. Take a look at 1784. That's the attachment. Executive
17 summary August 14, 2008.

18 Do you see that, sir?

19 A. Yes.

20 Q. This is an attachment that's at least based on the name
21 of the file you had made the first pass on.

22 Do you see that?

23 A. I see that. I believe that this is in preparation for
24 first pass --

25 Q. All right?

—MATTES - DIRECT - MARKETOS—

1 A. -- with me.

2 Q. So this is a document you would have received and
3 reviewed.

4 Fair?

5 A. I don't -- no, not fair.

6 Q. Oh? Okay.

7 Let's take a look at -- well, 1784 is an executive
8 summary by Tibotec employees. You're saying it was prepared
9 for your first pass?

10 A. I believe that -- I don't remember, but my belief would
11 be they are working on a first pass for me to take a look at.

12 Q. All right.

13 MR. MARKETOS: We'd offer 1784, Your Honor.

14 MR. KLEIN: Same objection. If he's seen it, he can
15 speak to it. If not --

16 THE COURT: All right. Overruled. It's admitted.

17 Now, you can ask him about it.

18 (Relators' Exhibit 1784 in evidence.)

19 BY MR. MARKETOS:

20 Q. Slide number 2, sir. There is a TT revenue summary
21 that's attached, and it actually just summarizes the revenues
22 associated with the two products as of this time in August of
23 2008.

24 I wanted to ask you if you recall the figures that are
25 being referenced here?

MATTES - DIRECT - MARKETOS

1 A. I do not.

2 Q. Okay.

3 You don't recall that the projections for -- from 2008,
4 2009 and 2010 were 148 million, 221 million, and 332 million
5 for Prezista?

6 A. I do not recall the specific numbers.

7 Q. With respect to Intelence, do you recall projections of
8 43 million, 62 million, and 130 -- excuse me, 82 million and
9 130 million from Intelence?

10 A. I do not recall any specific numbers. I just don't
11 recall.

12 Q. I understand, sir.

13 Let's turn to slide 18. What we can see here, sir, is
14 a full year net rate sales. These were -- these were what was
15 being forecasted for Prezista, the drug, over the course of
16 three years.

17 Do you agree?

18 A. Which graph am I looking at?

19 Q. Yeah.

20 If you look at the bottom right, sir?

21 A. Okay. Thank you.

22 Q. It says "full year NTS," and it talks about 2008, 2009,
23 2010?

24 A. Yes, sir.

25 Q. Okay? All right.

MATTES - DIRECT - MARKETOS

1 What this is is a forecast.

2 Right, sir?

3 A. Yes, it's a forecast.

4 Q. All right.

5 It's being projected to be sold for Prezista by Janssen
6 in 2008 and out into the future 2009, 2010.

7 Right?

8 A. Correct. I believe so.

9 Q. And those numbers, at least as presented in this
10 executive slide deck, were 154 million, 223 million for 2009,
11 and 338 million for 2010.

12 Correct?

13 A. As per this graph.

14 Q. If we take a look at slide 24. This is for Intelence 09
15 dynamic and stable patient summary.

16 Do you see that?

17 A. Yes.

18 Q. All right.

19 And what's being discussed here actually is Intelence
20 achieving a 25 percent switch share in 2009 of the overall
21 dynamic market.

22 Do you see that in red?

23 A. Yes.

24 Q. And to be clear, sir, what we can see in the left column
25 is the number of switches for A through D naive for Intelence.

MATTES - DIRECT - MARKETOS

1 Do you see that?

2 A. A -- yes, I do.

3 Q. That column is showing the projected number of switches
4 of patients in specific segments of the HIV population.

5 Right, sir?

6 A. I mean, I believe I -- I don't remember seeing it. I'm
7 processing here, so.

8 Could you ask the question again, please?

9 Q. Sure.

10 What Janssen was projecting for Intelence in 2009 was a
11 number of switches and specific segments of the HIV patient
12 population -- Janssen would switch to Prezista -- to Intelence
13 as a drug.

14 Correct?

15 A. It would appear that's what they're doing here.

16 Q. And that included a large segment of patients in the
17 naive segment of the population.

18 Do you see that?

19 A. Yes.

20 Q. Just as reminder, Intelence was never on-label for naive
21 patients, was it?

22 A. Not that I recall.

23 Q. Take a look at slide 25 quickly. There were forecasted
24 sales of 43 million, 82 million and 130 million out into the
25 future for Intelence.

MATTES - DIRECT - MARKETOS

1 Right, sir?

2 A. On the lower right graph, yes.

3 Q. And if we look at the lower right -- when we see the word
4 "NTS," that's net trade sales.

5 Right?

6 A. Correct.

7 Q. Total amount of dollars that Janssen receives for the
8 sale of this specific drug?

9 A. On a net basis, yes.

10 Q. All right.

11 And 48 million for 2008 on the bottom right here,
12 85 million in 2009, and 133 million in 2010.

13 Right, sir?

14 A. Yes, sir.

15 Q. And built into this forecast, as we just saw, sir, was a
16 projection of capturing naive patients.

17 Agreed?

18 A. That's what the call was, yes.

19 Q. Take a look at RX 1785. We're talking about January of
20 2009. I'm fast-forwarding in time, sir.

21 Is this is an email from you?

22 A. It's -- the exchange is credo. I don't --

23 Q. Yes. Hold on. There's a cover email.

24 A. Okay. Thank you.

25 Q. Actually, let's take a look at 1786, if we could. 1786

—MATTES - DIRECT - MARKETOS—

1 is an email from Mr. Ruppertsberger to you, right, sir?

2 All right. The email from Ruppertsberger to you refers
3 to a 2009 FBP weekly gating.

4 Do you see that?

5 A. Yes.

6 Q. All right.

7 MR. MARKETOS: We're going to offer 1786, Your Honor.

8 MR. KLEIN: No objection, Your Honor.

9 THE COURT: So admitted.

10 (Plaintiff's Exhibit 1786 in evidence.)

11 BY MR. MARKETOS:

12 Q. And it says, "Attached please find the deck we reviewed
13 with the 2009 FBP weekly gating for the \$367 million."

14 Do you see that?

15 A. Yes.

16 Q. And Mr. Ruppertsberger was saying "provide talking points
17 to Glenn and Mark."

18 That's Mark Gossett.

19 Right?

20 A. Correct.

21 Q. Provide talking points to you and Mr. Gossett on what it
22 will take to hit \$400 million in E through H switch shares and
23 exit prescription market shares."

24 Do you see that?

25 A. Yes, I see that.

MATTES - DIRECT - MARKETOS

1 MR. MARKETOS: All right. And if we take a look back
2 at 1785, Ms. Johnson.

3 BY MR. MARKETOS:

4 Q. There's an email from you. It says, "Thanks to all of
5 you for allowing me to sit and contribute to your meeting."
6 We'll see if we can pull that up for you.

7 MR. MARKETOS: Just for the witness, please,
8 Ms. Johnson. Thank you.

9 BY MR. MARKETOS:

10 Q. Can you see this email that you sent, sir, Exhibit 1785?

11 A. Can I just see the front of it, too, please?

12 Q. How's that?

13 A. That's better. Thank you.

14 Q. It's an email that you sent to some of the higher-ups at
15 Janssen.

16 Do you see that?

17 A. Some of the members of the team. I wouldn't say
18 higher-ups, but, yes.

19 Q. Okay.

20 Well, Mr. McCormick, Mr. Libby, some of the sales
21 representatives --

22 A. Yes.

23 Q. -- and the managers?

24 A. Yes, sir.

25 Q. And it was about a meeting, and you said, "My request is

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1 that you continue to demonstrate the leadership qualities that
2 will allow our company to capitalize on our increase in
3 investment people."

4 Do you see that?

5 A. Yes.

6 Q. All right, sir.

7 And you said, "I ask that we balance the reorg work
8 with intense discussions about moving the business forward."

9 Do you see that?

10 A. Yes.

11 Q. You said, "What will it take to increase E through H
12 switch share for Prezista, Intelence users, and E through H
13 share in Prezista naive."

14 Do you see that?

15 A. Yes.

16 MR. MARKETOS: Your Honor, we offer 1785.

17 MR. KLEIN: No objection, Your Honor.

18 THE COURT: So admitted.

19 (Relators' Exhibit 1785 in evidence.)

20 BY MR. MARKETOS:

21 Q. Just to be clear, sir, as of 2009, Intelence users in E
22 through H share, that would have been off-label.

23 Do you agree?

24 A. Some of those segments would not -- yes, would have been
25 off-label.

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1 Q. And what you were wanting to do was increase -- to ask
2 your sales force to do what it took to increase those switch
3 shares.

4 Correct?

5 A. I don't think I'm giving direction specifically for all
6 this -- for the on-label segments, yes.

7 Q. My question for the time being is --

8 A. Sure.

9 Q. -- with respect to the off-label portion, you were giving
10 direction to see how the sales force could go about getting
11 people to switch in segments that were off-label for
12 Intelence.

13 Do you agree?

14 A. The way it's written, it would say that. It should --
15 clearly I'm talking about the on-label shares, but, yes.

16 Q. Okay.

17 So you were talking about the on-label shares, but the
18 way it was written, it would appear that you were talking
19 about off-label.

20 Is that fair?

21 A. Yeah. I have to really think about that, but again, all
22 of our communication was to go only after the on-label
23 segments.

24 Q. Let's take a look at RX 1786 -- excuse me, 1787. This
25 was the attachment to the email from Mr. Ruppertsberger we were

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1 just looking at.

2 MR. MARKETOS: We'd offer 1787 -- 1787. Thank you.

3 MR. KLEIN: No objection, Your Honor.

4 THE COURT: So admitted.

5 (Relators' Exhibit 1787 in evidence.)

6 BY MR. MARKETOS:

7 Q. Let's take a look at slide 10. This was a 2009 gating
8 review by business analytics, and if we're looking at what's
9 being tracked here, sir, what is being tracked is Intelence A
10 through D segments, naive share through 2008, 2009.

11 Do you see that?

12 A. That's what's being tracked here, yes.

13 Q. Yeah.

14 And then what you can remind us all of is the fact that
15 Intelence was never on-label for that segment of the HIV
16 patient market, A through D.

17 Correct?

18 A. Correct. These were spontaneous prescriptions.

19 Q. They're spontaneous prescriptions for which your sales
20 force had a target, naive share target, naive \$92 million?

21 A. We -- we forecasted there would be \$92 million.

22 We're looking -- looking at it, it says we forecasted that
23 there would be \$92 million of sales. It doesn't mean that we
24 went actively after it.

25 Q. Let's be clear, sir.

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1 A. Sure.

2 Q. This isn't a prediction of spontaneous sales. It's an
3 actual naive share target that your sales force was targeting
4 for that year.

5 Correct?

6 A. I don't even know if it was the sales force target. It
7 was the company target or company estimate.

8 Q. Can we agree that what is being projected here is a naive
9 share target of \$92 million?

10 A. In this case I think target means estimate, but whatever
11 it looks like is what we would have expected to achieve in
12 that segment.

13 Q. All right.

14 And that, of course -- that A through D segment for
15 Intelence again would have been off-label.

16 Fair?

17 A. Some of it, yes.

18 Q. Well, all --

19 A. I don't have the segments in front of me, so I don't know
20 if all of them are off-label or not.

21 Q. Well, let's be clear, sir.

22 Intelence, from the start to the finish of your tenure
23 at Janssen, was never permitted to be promoted to the naive
24 segment.

25 Right, sir?

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1 A. Yes. That's true.

2 Q. It was only indicated for treatment-experienced patient
3 ever.

4 Right?

5 A. Yes, yes.

6 Q. So A through D segments, naive share targets, that all
7 would have been off-label.

8 Correct?

9 A. As I'm saying, I don't know if all A through D was naive.
10 It could have been -- it could have been some other patient
11 segment -- A could have been some other patient segment. I
12 don't have it in front of me to know that A through D
13 encompassed just naive.

14 Q. And I can remind you as we go through this if I need to,
15 but this is, of course, characterized as a naive share, right,
16 not some naive, some experienced, a naive share target.

17 Right?

18 A. Naive prescriptions, share of that -- of naive patients.

19 Q. Thank you.

20 And naive patients would have been off-label patients?

21 A. Yes. Naive patients would have been off-label.

22 Q. Take a look at RX 128. All right, sir. Exhibit
23 Relators' Exhibit 128 is another email from Mr. Ruppertsberger
24 to you, sir.

25 Do you see that?

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1 A. Can you enlarge it? Yes, thank you. Yes.

2 MR. MARKETOS: We'd offer Relators' 128.

3 MR. KLEIN: No objection, Your Honor.

4 THE COURT: So admitted.

5 (Relators' Exhibit 128 in evidence.)

6 BY MR. MARKETOS:

7 Q. There is a -- if we take a look at page 1 of the email,
8 there is a reference to "our forecast discussions," and now
9 we're looking at the forecast for Prezista and Intelence.

10 Do you see that?

11 A. Yes.

12 Q. All right.

13 And what we can see is that there is a predicted share
14 of Prezista for \$300 million and Intelence for \$100 million.

15 Do you see that?

16 A. Yes.

17 Q. All right.

18 There's a reference to an exit E through H share for
19 Intelence.

20 Right, sir?

21 A. Yes.

22 Q. All right.

23 This is a prediction of the number of patients who are
24 going to switch to Intelence.

25 Right, sir?

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1 A. Prediction of -- yes. Yes, it is.

2 Q. If we take a look at the deck that's attached, we're
3 going to take a look at page 3. Tibotec Therapeutics,
4 \$400 million. That was the projection of sales for 2009 in
5 total between Prezista and Intelence.

6 Right?

7 A. Again, I don't remember specifically if this is a --
8 aspiratory target or if this was the actual target. I don't
9 recall the specific number.

10 Q. Take a look at page 3 of the deck -- excuse me, page 4.
11 You can see there's a breakdown of the target for the Tibotec
12 franchise, and it breaks it out by Prezista and Intelence.

13 A. Helpful. Thank you.

14 Q. Do you see that, sir?

15 A. Yes.

16 Q. All right.

17 And there's a projection for Prezista and Intelence for
18 the year, and it totals \$382 million in TT.

19 Right?

20 A. Correct. Yes.

21 Q. And then total at the bottom is \$400 million projected.

22 Correct?

23 A. Yes.

24 Q. If we turn to 1788, please.

25 1788 is a communication from you dated March of 2010 --

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1 I'm skipping forward to the next year. Do you see that email
2 from you, and it attaches a one-page strategy?

3 A. Yes.

4 Q. It looks like it's to many, many, many, many members of
5 the organization.

6 Is that fair?

7 A. Yes.

8 Q. And if we take a look at the one-page strategy --

9 MR. MARKETOS: We offer 1788, Relators' 1788.

10 MR. KLEIN: No objection.

11 THE COURT: So admitted.

12 (Relators' Exhibit 1788 in evidence.)

13 MR. MARKETOS: All right. Blow up the second
14 paragraph, if you would, please, Ms. Johnson.

15 BY MR. MARKETOS:

16 Q. You state, "As we discussed during our call, we took a
17 different approach when developing our strategies for 2010.
18 Rather than a top-down approach, we created our goals from the
19 bottom up working with each team."

20 Do you see that, sir?

21 A. Yes.

22 Q. And it says, "The goals on the attached document are the
23 ones upon which our performance as a company and as a team
24 will be measured at the end of 2010."

25 Right, sir?

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1 A. Yes.

2 Q. Turn to slide 4 of the attachment. "The goal for 2010
3 was \$584 million."

4 You can confirm that for me?

5 MR. MARKETOS: Thank you, Ms. Johnson, if you can
6 turn to the attachment and go to Slide 4.

7 BY MR. MARKETOS:

8 Q. In a moment --

9 A. Sure.

10 Q. -- we will go to Slide 4.

11 A. Sure.

12 Q. Let me see if, while we're pulling that up, we can
13 refresh your recollection, sir.

14 Do you agree or do you have a recollection about
15 \$584 million being the target for Prezista and Intelence in
16 2010?

17 A. I don't recall the specific numbers.

18 Q. That would have been -- that would have been your last
19 year, full year at the company; is that right?

20 A. Yes.

21 Q. All right.

22 We'll circle back when we get that attachment. Bear
23 with me.

24 All right. Let's go Relators' 1789. This is a PBP
25 board review you can see dated August 16, 2010.

—MATTES - DIRECT - MARKETOS—

1 Do you recognize what a PBP board review would be?

2 A. I don't recall specifically who PBP was, but...

3 Q. Okay, sir.

4 A. I don't know if it was my board or the board that I
5 participated in at a senior level.

6 Q. One of the two.

7 Fair?

8 A. Yes, yes.

9 MR. MARKETOS: We'd offer Relators' 1789, Your Honor.

10 MR. KLEIN: No objection, Your Honor.

11 THE COURT: So admitted.

12 (Relators' Exhibit 1789 in evidence.)

13 MR. MARKETOS: Let's turn to slide 16.

14 BY MR. MARKETOS:

15 Q. The executive summary as of this date in 2010, August of
16 2010, stated that "The United States' third agent market was
17 expected to grow from 3.7 billion in 2009 to 5 billion by
18 2012."

19 Correct?

20 A. I don't remember what third agent market was. What is
21 represented here is what you're saying. I don't remember
22 specifically what third agent market was.

23 Q. Okay.

24 But what we can see is what Janssen was projecting for
25 the year 2012?

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1 A. The market.

2 Q. Yeah. It's the market, and then if you turn to the first
3 bullet point, for protease inhibitor gross sales, expected to
4 reach \$2.6 billion. Prezista's gross sales were projected to
5 hit 941 million.

6 Do you see that?

7 A. Yes.

8 Q. And for Intelence, Intelence was an NNRTI. That was the
9 type of drug.

10 Right?

11 A. Yes.

12 Q. The non-nuke, so to speak?

13 A. Yes, yes.

14 Q. And it was a market of approximately \$1.6 billion.

15 Correct?

16 A. That's what's being depicted here, yes.

17 Q. Yes.

18 And Intelence, Janssen was predicting, would hit
19 \$233 million in gross sales for the year 2012 alone.

20 Correct?

21 A. What's depicted here for both Prezista and Intelence are
22 sales and the share of the market.

23 Q. Correct. And what we can see is the year-over-year
24 increase in volume, price, and market share.

25 Correct?

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1 A. Yes, yes.

2 Q. And if we take a look at Slide 17, quickly.

3 There's a projection here for one billion dollars in
4 gross demand in sales in 2011.

5 Do you see that?

6 A. So this was a 2010 presentation, correct. I'm just
7 trying to make sure we're on the same page.

8 Q. Yes. It's an August 2010 projection for the next year.
9 Right?

10 A. 2010. Yeah, I guess that number was -- was close to a
11 billion dollars, and we could potentially get there.

12 Q. Yes.

13 And if you take a look at the combined projections for
14 Intelence and Prezista for 2011, it was projected to be
15 \$1.3 billion in sales, right, 207 million and 963 million,
16 respectively.

17 Right?

18 A. Yes. Little circles. There it is, yes. Okay.

19 Q. And then what was projected for 2012 was \$233 million for
20 Intelence and \$1.23 billion for Prezista.

21 Correct?

22 A. Correct.

23 Q. Now, sir, we touched yesterday -- and I'm going to wrap
24 up here in just a few minutes.

25 We touched yesterday on some issues about return on

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1 investment. Do you recall that discussion we had about what a
2 return on investment means?

3 A. I think we had that discussion as it pertained to the
4 medical information requests.

5 Q. Yes.

6 So we also had that discussion as it related to the
7 speaker -- promotional speaker bureau.

8 A. Yes, we do --

9 Q. Do you recall that?

10 A. Yes, I do recall.

11 Q. All right.

12 We'll take a look at RX 149. RX 149 is a DTC pilot ROI
13 analysis. This is a Janssen deck dated January 29, 2009.

14 Do you know what a pilot ROI analysis is?

15 A. So I would -- by the cover sheet I would think we were
16 probably looking at potential of return on doing
17 direct-to-consumer advertising, and I would imagine the team,
18 if this was presented to me or whoever it was presented to,
19 would be looking at answering that question.

20 MR. MARKETOS: We'd offer Relators' 149, Your Honor.

21 MR. KLEIN: We object, Your Honor.

22 THE COURT: Sidebar. I know what the issue is, but I
23 want to talk to you guys about it.

24 (Sidebar begins at 10:05 a.m.)

25 THE COURT: I guess I want to clarify. He testified

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1 that that's a direct to consumer. So I thought we've been
2 talking about -- go ahead.

3 MR. MARKETOS: This has nothing to do -- that
4 distinction, Your Honor. There's just an ROI analysis of the
5 value of a patient being on Prezista, and one slide has got
6 nothing to do with targeting.

7 THE COURT: It has nothing to do with marketing to
8 consumers.

9 MR. MARKETOS: Correct.

10 THE COURT: All right. That's different. But I
11 don't know the deck.

12 MR. KLEIN: I mean, I don't know that we've seen the
13 deck either, the specific page that Mr. Marketos is planning
14 to show.

15 THE COURT: Do you have a hard copy?

16 MR. KLEIN: But, I mean, the deck says -- sorry.

17 THE COURT: No, no, go ahead.

18 MR. KLEIN: I mean, the deck on it says DTC. I mean,
19 everything in that deck, I would presume, relates to direct to
20 consumer, no?

21 MR. MARKETOS: Two things, Your Honor. There's no
22 objection to this exhibit on the exhibit list, A.

23 B, this has nothing -- my question has nothing to do
24 with direct to consumer.

25 THE COURT: Right. But you're moving in the entire

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1 exhibit, right?

2 MR. MARKETOS: Sure.

3 THE COURT: I don't know what's in there. If you
4 only ask him about the issue which I'm okay with, what else is
5 in this deck? Because it goes back with the jury.

6 Is there anything about marketing to consumers that is
7 going to confuse them as to marketing to physicians, which is
8 different apples and oranges as we talked about before?

9 MR. MARKETOS: Yeah. Respectfully, Your Honor, I can
10 address that issue later because it's -- they haven't briefed
11 this issue as a false distinction they're making, but it
12 doesn't matter.

13 I will -- if there's some argument that they want to
14 make afterward with respect to the other slides, I'm only
15 going to the LTD slide, which has to do with how they
16 calculate the value of the prescriptions, period.

17 Nothing to do with the difference between direct to
18 consumer.

19 THE COURT: Do you want to move in just that
20 particular page, then, for now?

21 MR. MARKETOS: Yes, sir.

22 THE COURT: All right.

23 MR. KLEIN: Well, I mean, I don't think we have any
24 confidence that that's not a direct-to-consumer slide. It
25 could be a calculation --

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1 THE COURT: No, no. Well, let me see the slide.

2 MR. MARKETOS: Sure.

3 (Brief pause.)

4 MR. MARKETOS: It's on the screen for you,
5 Your Honor.

6 MR. KLEIN: Can I see it as well?

7 MR. MARKETOS: Sure.

8 (Brief pause.)

9 THE COURT: So do you have it as well?

10 MR. KLEIN: I haven't seen it.

11 MR. MARKETOS: You've seen it.

12 THE COURT: But, I mean, Mr. Marketos, so that page
13 is just talking about return on investment with respect to
14 sales of Prezista.

15 MR. MARKETOS: Yes, sir. It's how they calculate the
16 forecast, that page.

17 THE COURT: There's nothing in there about marketing
18 to consumers on that page?

19 MR. MARKETOS: Not at all.

20 THE COURT: So then --

21 MR. KLEIN: Which slide are we on? I apologize.

22 MR. MARKETOS: 29.

23 THE COURT: All right. Guys, unnecessary speaking
24 causes trouble here.

25 So look at page 29.

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1 MR. KLEIN: So isn't this a value of Prezista patient
2 calculation for the direct-to-consumer space?

3 MR. MARKETOS: No.

4 MR. KLEIN: How do we know that?

5 MR. MARKETOS: Because -- may I respond, Your Honor.

6 THE COURT: Yes. But respond to me, yeah.

7 MR. MARKETOS: So two things. If I could, if this is
8 going to be an objection, you ought to object and raise this
9 issue in advance, A, and they didn't. This says no objection
10 on the trial exhibit list.

11 B, this is the value -- the financial value of a
12 consumer being on Prezista. It has nothing do with marketing.
13 This is a metric that goes into their forecasts. That's it.

14 He's saying that this is the value of a consumer to
15 them. That's a patient. That's all this is. It has nothing
16 to with marketing. It never has. This is an actual
17 calculation that goes into their forecasts.

18 MR. KLEIN: And I just -- this is from a
19 direct-to-consumer deck. The natural inference would be that,
20 you know, these are patients in the direct-to-consumer space
21 that they're talking about.

22 THE COURT: There's nothing about marketing in that
23 page.

24 MR. KLEIN: Correct.

25 THE COURT: All right. Here's what I'm going to do:

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1 I'm going to allow that one page for now.

2 MR. MARKETOS: Yes, Your Honor.

3 THE COURT: I'm reserving on the admissibility of the
4 rest of the deck until I know there's no confusion that can be
5 caused by whatever else is in there. I don't know.

6 But, Mr. Klein, for now, I'm going to limit the
7 admissibility just to that page.

8 MR. KLEIN: Thank you, Your Honor.

9 THE COURT: Later on we can address it.

10 MR. MARKETOS: Thank you, Your Honor.

11 (Sidebar was concluded at 10:10 a.m.)

12 (Open court.)

13 THE COURT: I'm sorry. So, Mr. Marketos, you're
14 going to page 29 of that slide deck for now, correct?

15 MR. MARKETOS: Yes, Your Honor.

16 THE COURT: All right.

17 MR. MARKETOS: Thank you.

18 THE COURT: The objection is noted, but I'll admit
19 page 29 and reserve on the rest of the deck.

20 MR. KLEIN: Thank you, Your Honor.

21 (Relators' Exhibit 149 page 29 in evidence.)

22 MR. MARKETOS: Ms. Johnson, you can publish page 29.

23 BY MR. MARKETOS:

24 Q. What you see here, sir, is a Janssen/Tibotec calculation
25 of the value of a Prezista patient.

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1 Right, sir?

2 It's a calculation of that value?

3 A. That's -- yes.

4 Q. And this is essentially putting a dollar figure on the
5 lifetime value of a patient that is taking the drug Prezista.

6 Correct?

7 A. Yes. It appears to be.

8 Q. If you take a look at the outputs there that's circled --

9 MR. MARKETOS: If you would blow up that circle for
10 us.

11 BY MR. MARKETOS:

12 Q. The lifetime value of a single patient on the drug
13 Prezista to Janssen was calculated at \$32,562 per patient.

14 Correct?

15 A. Based on somebody's calculation.

16 Q. Yes.

17 Based on somebody within Janssen?

18 A. Yes. I don't recall the sentence, but I assume.

19 Q. Yes.

20 And then it's got a full-year 2009 value and an average
21 2009 value.

22 Do you see that?

23 A. Yes.

24 Q. Calculating the value of a Prezista patient in terms of
25 dollars is how Janssen built forecasts, right, forecasts of

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1 projected sales and growth?

2 A. Basically, the way a forecast is built, it would be the
3 number of prescriptions times -- total prescriptions times the
4 average selling price, and patients -- it's a pretty complex
5 calculation.

6 Q. Yes.

7 A. Patients -- patients are included in that.

8 Q. All right.

9 Just to be clear, this calculation is a necessary input
10 into that calculation, this being the lifetime value of a
11 Prezista patient.

12 Correct?

13 A. This particular analysis appears to be focused on that.
14 How these numbers were used or not used, I don't know.

15 Q. Okay.

16 The lifetime value of a Prezista patient is a necessary
17 metric to calculate projected sales.

18 Right?

19 A. It's not a typical calculation that's used to calculate
20 forecasts.

21 Q. All right.

22 A. I would venture to say this was specific to this proposal
23 or analysis as it pertained to direct to consumer.

24 Q. Okay, sir.

25 Let's take a look at 1791, if we could.

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1 Mr. Mattes, you are aware of the fact that Johnson &
2 Johnson has what's called a credo, right, sir?

3 A. Extremely aware, yes.

4 Q. And that credo is something that Johnson & Johnson has
5 had as part of its organization for decades.

6 Correct?

7 A. Correct.

8 Q. And that has to do with the concept not just of doing
9 business and making profits but also doing so in an ethical
10 manner?

11 A. Correct.

12 MR. MARKETOS: Let's take a look at -- let's turn to
13 1791, if we could, please, Ms. Johnson. Actually 1785. I
14 keep doing that to you. I'm sorry, ma'am.

15 Your Honor, we offer Relators' 1785.

16 MR. KLEIN: No objection, Your Honor.

17 THE COURT: So admitted.

18 (Relators' Exhibit 1785 in evidence.)

19 BY MR. MARKETOS:

20 Q. All right, sir.

21 Johnson & Johnson's credo is something that is an
22 inspirational message that it has, and it spreads throughout
23 its organization.

24 True?

25 A. Everybody's reaction to it is different. It's certainly

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1 very inspirational to me.

2 Q. Okay, sir.

3 And as I understand it, the credo is essentially rules
4 of business but also rules of business ethics that Johnson &
5 Johnson wants to live by.

6 Correct?

7 A. That's a good definition.

8 Q. All right.

9 And if we take a look at the first paragraph here,
10 Johnson & Johnson states that "We believe our first
11 responsibility is to the patients, doctors, nurses, mothers,
12 and fathers who use our products and services."

13 Right?

14 A. Yep. Yes, sir.

15 Q. And then the second paragraph refers to the employees.
16 "We are responsible to our employees who work with us
17 throughout the world."

18 Right, sir?

19 A. Yes.

20 Q. That would include, of course, employees like sales
21 representatives, like Ms. Chrissy Brancaccio, Ms. Jessica
22 Penelow?

23 A. Every employee.

24 Q. Mr. Wilhelm, Ms. Sara Strand.

25 Right, sir?

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1 A. Every employee.

2 Q. All right.

3 If we take a look at the last paragraph, it says, "Our
4 final responsibility is to our stockholders, and business must
5 make a sound profit."

6 Do you see this?

7 A. Yes, sir.

8 Q. It also says, "Research must be carried on, innovative
9 programs developed, investments made for the future, and
10 mistakes paid for."

11 Do you see that?

12 A. Yes.

13 Q. You believe in that credo, do you not, sir?

14 A. Absolutely.

15 Q. One thing, sir, that is, of course, important to remember
16 is that if you're running an organization within the Johnson &
17 Johnson family, you don't want to skip over the first two
18 principles -- patient safety, employees -- to get to the third
19 principle about profit.

20 Is that fair?

21 A. Yes. That's why it's written in that order, and that's
22 why my interpretation is that it's first you do good, and then
23 if you do good, you can do well.

24 Q. And what Johnson & Johnson tells its employees and tells
25 the world is that if you make a mistake, you have to pay for

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1 it.

2 Fair?

3 A. That's what's written. Mistakes are paid for.

4 Q. Mr. Mattes, if it turns out that the organization,
5 Janssen/Tibotec, had marketed Prezista and Intelence off-label
6 and had paid inducements to physicians to prescribe those
7 drugs, you would expect that Janssen would pay for that
8 mistake?

9 A. You're asking me to be -- to be a judge on that? I can
10 only respond --

11 THE COURT: Mr. Mattes?

12 THE WITNESS: Yes.

13 THE COURT: You don't ask -- you can't answer the
14 question with a question.

15 THE WITNESS: Ask the question, please.

16 BY MR. MARKETOS:

17 Q. Do you want me to rephrase it?

18 A. Please. No. You can resay it, reframe it, whatever
19 you'd like.

20 Q. Sure.

21 If, in fact, Janssen had promoted Prezista and
22 Intelence off-label for a number of years, and if it paid
23 inducements to physicians in order for them to prescribe more
24 of the drug, you would expect Janssen to pay for that mistake.

25 True?

CROSS - MATTES - KLEIN

1 A. I don't think I can answer that question. I think it has
2 to be -- I can't answer that question.

3 MR. MARKETOS: Nothing further, Your Honor.

4 THE COURT: Thank you, Mr. Marketos.

5 Mr. Klein?

6 MR. KLEIN: Thank you, Your Honor. May I proceed?

7 THE COURT: Yes.

8 (CROSS-EXAMINATION BY MR. KLEIN:)

9 Q. Good morning, Mr. Mattes.

10 A. Good morning.

11 MR. KLEIN: Good morning, everyone.

12 BY MR. KLEIN:

13 Q. Just a few questions for you on some of the topics that
14 Relators' counsel covered. I actually want to start with
15 something that they sort of ended with toward the end of the
16 exam.

17 MR. KLEIN: Can I have the ELMO, please, Mr. Knecht.

18 BY MR. KLEIN:

19 Q. So I'm showing you Relators' Exhibit 1787, the chart that
20 they showed you from this document.

21 Do you remember --

22 A. Just recently.

23 Q. -- discussing that with Relators' counsel?

24 A. Yes.

25 Q. Okay.

CROSS - MATTES - KLEIN

1 And there were questions about the company projecting
2 or forecasting receiving naive shares -- a share of the naive
3 market for Intelence.

4 Do you remember that?

5 A. Yes.

6 Q. Okay.

7 Now, as a general matter, why would a company be
8 forecasting, projecting receipt of naive share or off-label
9 patient share?

10 A. Well, we -- in order to be sure we've -- were producing,
11 manufacturing enough product to meet demand, it's important to
12 understand the total demand picture.

13 There's nothing worse than telling -- there's nothing
14 worse than telling a patient, We don't have a drug for you,
15 especially in many conditions, and HIV is one of those -- HIV,
16 AIDS.

17 Q. So projecting that there will be some naive patients in
18 this case or some off-label patients, does that reflect an
19 assumption that the company will be promoting to those
20 patients?

21 A. No. In my career we always have to forecast spontaneous
22 demand for a product to be sure you had supply.

23 Q. Well, are doctors able to prescribe off -- any drug
24 off-label if in their medical judgment they think it's the
25 most appropriate treatment for the patient?

CROSS - MATTES - KLEIN

1 A. It's their medical judgment that they make, and they can
2 decide what to do.

3 Q. And so in all these presentations that we've just seen,
4 where there are references to forecasts of patient share that
5 may or may not be off-label, does that imply in any way that
6 the company was planning to promote off-label for those parts
7 of the market?

8 A. No, it does not.

9 Q. Okay.

10 Is the assumption, then, as you just -- I just want to
11 confirm.

12 Is the assumption, then, as you just articulated, that
13 the forecast would be the assumption would be that there would
14 be some off-label promotion because of the independent
15 decision-making of doctors?

16 A. Based on a number of factors, and it's -- yes, there
17 would be -- I think you said spontaneous, yes, spontaneous
18 use.

19 Q. And so like -- if I can just direct your attention to the
20 bottom of the slide, there's a legend at the bottom that says,
21 "promotion will only occur against on-label uses. Any sales
22 arising from segments representing off-label uses at that time
23 and assumed that a current PI will be a result of only
24 spontaneous sales."

25 Do you see that?

CROSS - MATTES - KLEIN

1 A. Yes.

2 Q. Is that consistent with your understanding of how Janssen
3 promoted and marketed its drugs?

4 A. Yes.

5 Q. Thank you.

6 I also wanted to ask you about the forecasting and
7 planning process.

8 So as we've established -- or as you've testified,
9 there can be spontaneous switches for off-label promotions.

10 Correct?

11 A. There can be spontaneous use, switches, and starts.
12 Whatever the physician wants to do, they can do.

13 Q. Okay.

14 And I think one of the documents -- just one second.

15 I'm going to show you one of the other documents that
16 Relators had discussed with you yesterday. I'm showing you
17 Relators' Exhibit 179, and I'm going to show you a couple
18 pages of it that you were shown yesterday.

19 Do you remember discussing this slide with Relators'
20 counsel, the new patient segmentation?

21 A. Yes.

22 Q. And I think you had testified that you weren't
23 necessarily clear on exactly who fell into what bucket, but
24 that some -- some of the segments on this slide would be
25 on-label, and some of the segments on this side would be

CROSS - MATTES - KLEIN

1 off-label.

2 Is that fair?

3 A. It's fair. Yes, it's fair.

4 Q. But if you look -- I don't know if you were shown this
5 slide, but if you look at page 12 -- let me zoom out a little
6 bit.

7 When the presentation was actually populated, when the
8 analysis was actually inserted, and -- the commentary on the
9 different segments was asserted, do you see on segment A
10 there --

11 A. Yes.

12 Q. -- on the far left under naive?

13 A. Uh-huh. Yes.

14 Q. That says, "priority upon full approval."

15 Do you see that?

16 A. Yes.

17 Q. All right.

18 And then do you see the callout box, the dialogue box
19 below it?

20 A. Yes.

21 Q. The second bullet where it says, "longer term penetration
22 with 800M QD and possibly 800 milligram formulation."

23 Do you see that?

24 A. Yes.

25 Q. All right.

CROSS - MATTES - KLEIN

1 So does this reflect that the company was planning to
2 pursue naive patients upon full approval? In other words,
3 when the label was expanded and those patients could be
4 promoted to on-label?

5 A. Upon receipt of the label, yes.

6 Q. And then actually further back in this same deck -- and I
7 don't know that this was shown to you either -- we have a
8 simplified version of the patient segmentation chart.

9 Do you see that?

10 A. Yes.

11 Q. All right.

12 And you see again naive is on the left, experienced is
13 on the right.

14 Right?

15 A. Yes.

16 Q. Okay.

17 And then do you see the arrow above that?

18 A. Yes.

19 Q. Okay.

20 There's an arrow that looks like a timeline.

21 Right?

22 And on the right it says 2007 to 2008.

23 A. Yeah, it's kind of going in the reverse direction, but
24 yeah --

25 Q. Yeah. It's a little confusing the way it's set up, but

CROSS - MATTES - KLEIN

1 then on the left it says "2009 and beyond."

2 A. Yes.

3 Q. Do you see that?

4 A. Yes.

5 Q. All right.

6 And did Prezista get its indication for naive patients
7 in 2008?

8 A. I don't believe so. I don't remember the exact date that
9 we received it, but you can help me. But it took time to --

10 Q. Took time to get it?

11 A. Right.

12 Q. But did Prezista launch in 2006?

13 A. Yes.

14 Q. Okay.

15 And approximately two years later -- two plus years
16 later, in the fall of 2008, it got the naive indication.

17 Is that consistent with your recollection?

18 A. Yeah, not specifically to the time. I don't remember how
19 long.

20 Q. Okay.

21 So if we look at this chart and the sort of backwards
22 time arrow, would this show that the company was promote --
23 would be seeking to promote to experienced patients in 2007
24 and 2008 and would only be promoting to naive patients 2009
25 and beyond, after it had the indication?

CROSS - MATTES - KLEIN

1 A. Yeah. It's also with some of the segments under
2 "experienced" being not highlighted, it tells me that those
3 were not planned until we could actually do it on-label.

4 Q. But just to be clear for the record, is the answer to my
5 question yes?

6 A. Yes.

7 Q. All right.

8 Now, you were shown this document yesterday, a policy
9 document, quite a lengthy policy document.

10 Do you remember discussing this document with counsel
11 yesterday?

12 A. Yes, very well.

13 Q. All right.

14 And this document actually -- if you'll see, it has a
15 section on forecasting on page 5.

16 Do you see that?

17 A. Yes.

18 Q. All right.

19 Now, for forecasting it says, "Sales forecast should be
20 created in coordination with the finance departments because
21 sales forecast are tools to inform overall business decisions
22 such as supply management and are relied on for financial
23 reporting purposes. They can include total sales projections
24 including those for on-label and off-label uses and must be
25 accurate and complete."

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1 Do you see that?

2 A. Yes.

3 Q. So the plan and forecasting documents that we were just
4 looking at, those slide decks and the Relators' counsel took
5 you through today and yesterday, are they consistent with this
6 policy?

7 A. Yes.

8 Q. Yesterday Relators' counsel showed you a number of
9 marketing materials.

10 Do you remember that, the glossy?

11 A. Yes, yes.

12 Q. Okay.

13 I think they've been referred to as glossaries or
14 slim-jims, different materials.

15 Do you remember the marketing materials from yesterday?

16 A. Yes.

17 Q. Okay.

18 And there were some questions yesterday about whether
19 those marketing materials -- who approved those marketing
20 materials.

21 Do you remember that?

22 A. Yes.

23 Q. All right.

24 Is it your understanding that compliance would have
25 reviewed and approved all those marketing materials?

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1 A. Yes.

2 Q. Okay.

3 And was it your understanding that marketing
4 materials -- there is a process to submit marketing materials
5 to the Government so that they could review them as well?

6 A. Yes. I believe there was a periodic requirement to share
7 materials with the FDA, Government, yes.

8 Q. Right.

9 Okay. So let me show you a document you discussed
10 yesterday, although I don't know that we focused on all the
11 parts of it that we're going to highlight here.

12 But do you remember discussing this document,
13 Defendants' Exhibit 2083, regarding the approval of marketing
14 materials?

15 A. I don't remember specifically the document, but I
16 remember reviewing a lot of these types of documents.

17 Q. Yeah.

18 And I think yesterday Relators' counsel had focused on
19 the bottom bullet of the first section of the bullet, where it
20 says -- bullets where it says "minimal impact on lipids,
21 safety claim was challenged -- changed to low impact on
22 lipids."

23 Do you remember that?

24 A. Yes, I do, yes.

25 Q. Okay.

CROSS - MATTES - KLEIN

1 But let's look at the material above that.

2 Okay?

3 In the paragraph beginning with "the draft version."

4 Do you see that?

5 A. Yes.

6 Q. It says, "The draft version you were originally trained
7 on has changed as a result of Prezista's final label and
8 comments from the FDA."

9 Do you see that?

10 A. Yes.

11 Q. All right.

12 And then the last sentence in that paragraph says,
13 "Please review these important changes and the compliance note
14 provided below to ensure that the promotion of Prezista is in
15 accordance with FDA guidance and our company policy."

16 Do you see that?

17 A. Yes.

18 Q. And then the bullets below follow that.

19 Correct?

20 A. Yes.

21 Q. Okay.

22 A. I was reading them.

23 Q. No problem.

24 So the changes that are reflected in the bullets,
25 including the change with respect to the lipid messaging, that

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1 was done in response -- was that done in response to FDA
2 guidance and comments?

3 MR. MARKETOS: Objection, Your Honor. It assumes
4 facts. This witness testified as to lack of knowledge.

5 THE COURT: I'm just looking at the question. Just
6 bear with me a second.

7 I'll sustain the objection, but just rephrase the
8 question.

9 MR. KLEIN: Rephrase the question?

10 THE COURT: So the objection as to form, I'm going to
11 sustain. Does that make sense?

12 MR. KLEIN: Yes, Your Honor. Thank you.

13 BY MR. KLEIN:

14 Q. So, Mr. Mattes, does this document indicate to you that
15 the modifications to the marketing materials were made based
16 on -- in part at least on FDA comments and feedback?

17 A. Yes.

18 Q. All right.

19 And then below, you see the next paragraph, it says,
20 "Please remember the following important compliance points
21 when utilizing the Prezista visual aid with your customers."

22 Do you see that?

23 A. Yes.

24 Q. And then the bullet below, "Tibotec Therapeutics' policy
25 is always to promote our products within the FDA-approved

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1 labeling with fair balance and full disclosure."

2 Do you see that?

3 A. Yes.

4 Q. All right.

5 And then, second sub-bullet, "All unsolicited off-label
6 requests should be forwarded to the medical information
7 department," and it leaves a phone number.

8 Do you see that?

9 A. Yes.

10 Q. All right.

11 Is that description -- well, in your experience and
12 understanding, was the company's promotion of Prezista and
13 Intelence consistent with those bullets in that direction
14 there?

15 A. Yes.

16 Q. For all marketing materials that were shown to you
17 yesterday, do you have any reason to believe that they would
18 have been approved for some different process than is outlined
19 here involving the FDA?

20 A. The process was consistent for everything that went out
21 to the sales force.

22 Q. I'm going to show you another email that you were shown
23 yesterday by Relators' counsel. This relates to medical
24 information requests for MIRs.

25 All right?

CROSS - MATTES - KLEIN

1 A. Aw, yes.

2 Q. I'll make this a little easier to read.

3 A. Thanks.

4 Q. Do you remember discussing this document, an email from
5 Frank Murphy to others relating to the relative volume of MIRs
6 in New York and Florida?

7 Do you remember looking at this document?

8 A. Yes.

9 Q. Okay.

10 And I think there were a bunch of questions about this
11 document about, you know, the uses of MIRs.

12 Do you remember that?

13 A. Yes.

14 Q. But some of the language in this document I don't
15 think was -- it might not have been highlighted in the exam
16 yesterday, so I just want to make sure we're mindful of it.

17 So in the middle of that description, it says, "As we
18 discussed in the past, we need to use the MIR process to
19 answer unsolicited questions on Prezista that are off-label."

20 Right?

21 And then it goes on to talk about the difference in
22 volume between New York and Florida for MIRs.

23 And then in the second -- the third to last sentence,
24 you see that it says, "That's not what I expected, want all of
25 your commitments to use this resource."

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1 Then it says "Use this resource when asked by your
2 customers."

3 So using the MIR process to answer unsolicited
4 questions, using the resource or recourse I guess you say
5 there when asked by your customers.

6 Is that the proper use of the MIR process?

7 A. Yes.

8 Q. Just sort of on MIRs more generally, if there's a new
9 product that's just been launched, like Prezista in 2006 or
10 Intelence in 2008, would you expect to have a certain volume
11 of MIRs?

12 A. You would expect it -- yes. You want to be -- yes.

13 Q. Okay.

14 And why would you expect that?

15 A. Well, there's -- it's a new drug in a difficult-to-treat
16 therapy-- -- patient population, and physicians would want to
17 know probably more than what the representative could
18 communicate on-label.

19 Q. Okay.

20 A. So, yes, there would be increased use initially. You
21 would hope there would be increased number of MIRs and -- yes.

22 Q. So is it -- were MIRs a way to sort of track physician
23 engagement with the sales staff medicine?

24 A. Yes, yes.

25 Q. And if -- if you saw very few or no MIRs, would that be a

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1 concern?

2 A. It would cause you to ask questions, yes.

3 Q. And why is that?

4 A. Well, you know, is there no interest? Are we -- is the
5 message perhaps on the good side? Is the message so thorough
6 that there are no questions?

7 You know, it would -- it would definitely be abnormal
8 in my experience, and I've launched many products, where you
9 wouldn't get a fairly large amount of inquiries for additional
10 data that we couldn't necessarily disseminate.

11 So there would be lots of reasons to want to assess a
12 dearth of requests.

13 Q. Let me ask you this: If there were no MIRs, could that
14 be an indication that reps are talking -- are actually talking
15 to doctors off-label?

16 A. Could be potentially a consideration, yes.

17 Q. And why would that be, if there are no MIRs?

18 A. Well, assuming that the questions are potentially
19 off-label -- first of all, the rep can answer -- should be
20 able to answer on-label questions. They're trained to do
21 that.

22 If the questions are off-label in nature, the
23 representatives would not be able to answer those questions by
24 policy.

25 Q. Okay.

CROSS - MATTES - KLEIN

1 And so if there were a lack of MIRs, would that
2 indicate that the reps were just answering those questions
3 improperly rather than submitting them through the process?

4 A. A sworn consideration could be -- again there was just no
5 interest, you know. It's --

6 Q. Okay.

7 A. -- another issue.

8 Q. Another issue. All right.

9 So let's maybe zoom out a little bit. You've had a
10 long -- I think you testified you've had a long career in this
11 industry, right?

12 A. Yes. I think -- I was just pondering how long.

13 Q. And I understand you testified -- I think you've held
14 several senior positions.

15 A. Yes.

16 Q. Okay.

17 Did you ever participate or were you ever you appointed
18 to any Government bodies relating to HIV?

19 A. Yes. I had the honor of serving President George W.
20 Bush's action committee on HIV and AIDS. The committee was --
21 reported to the Department of Health and Human Services. I
22 was sworn in by the President.

23 I was one of two industry representatives to that
24 committee, during my tenure as president of Tibotec.

25 Q. Okay.

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1 What sorts of issues did you have to deal with as part
2 of that -- as part of that group?

3 A. We helped the President establish his policy on the HIV
4 and AIDS patient community, both domestically and globally.
5 We were a member from industry, from clergy, from Government
6 experiences, and there were two committees you were part of.

7 It was called POSHA, and there was a POSHA committee.
8 I was assigned to the international group, which was
9 interesting because I was a president in the U.S., and we
10 helped President Bush establish a piece of legislation called
11 PEPFAR.

12 And PEPFAR was a -- supported the funding by the
13 United States to help ease the strains of the global pandemic
14 and HIV and AIDS, which during those years was quite more
15 profound than others.

16 Interestingly enough, to the President's credit, the
17 legislation was passed as a security measure because he
18 positioned that AIDS was destabilizing third world countries
19 and could potentially lead to unrest and further implications.

20 And under his guidance and leadership and POSHA's
21 support, that legislation was passed into law.

22 Q. All right.

23 So is it fair to say throughout your career you've been
24 committed to the issue of HIV and AIDS and the treatment of
25 HIV/AIDS population?

CROSS - MATTES - KLEIN

1 A. Certainly since being given the assignment of president
2 of Tibotec, Janssen, yeah.

3 Q. Okay.

4 We'll come back to that a little bit later. We'll come
5 back to the credo a little bit later as well.

6 So there's been a lot of talk about the launch of
7 Prezista in 2006, and the miss -- the forecasting miss, where
8 initial sales did not meet expectations.

9 Do you recall that --

10 A. Very well.

11 Q. -- discussion?

12 A. Very well.

13 Q. All right.

14 And so based on your understanding as the president of
15 the company, what was the reason for the miss? In other
16 words, what did the company expect to get that was missing
17 when things actually played out in 2006?

18 A. So in my opinion, the biggest reason for the slower
19 uptake and results compared to forecast was the rate at which
20 physicians actually switched their patients. Remember, that
21 was our indication, highly treatment-experienced patients.

22 The drugs that we were competing with, the other
23 protease inhibitors, were quite effective and on the market
24 for some time, and I think the miss was assuming that once a
25 patient became -- their disease, their virus, became

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1 detectable again in blood work, they would switch from --
2 assuming they were on one or two other protease inhibitors.
3 That didn't happen as quickly as we thought it would.

4 So from my perspective, and I think research validated
5 that, we got the switches, but it took longer to get the
6 switches. And our numbers -- our penetration to the market
7 really followed that.

8 So there was the rate of switching, how quickly would a
9 physician switch that caused the slower uptake than what we
10 had forecasted.

11 Q. Okay.

12 And did the miss of -- did missing a forecast have
13 anything to do at all with the fact that the company was not
14 getting off-label patient populations that it had hoped to
15 get?

16 A. Yeah. I don't recall what specific forecasts were given
17 to off-label use. Again, it was -- that was done for
18 production purposes.

19 But if you looked at the expectation of the approved
20 indication and how quickly those physicians would switch those
21 patients, there was -- to use the language that was used
22 earlier, there was a mistake made in how quickly that would
23 happen.

24 Q. And I think you've testified that as a result of that,
25 the forecasts were lowered later in the year to match the

CROSS - MATTES - KLEIN

1 actual results.

2 Is that right?

3 A. To -- yeah. To match what was -- yes. Yes.

4 Q. Okay.

5 And was there a corresponding reduction to sales
6 targets that the sales folks had to meet to get their bonuses?

7 A. There was a reduction. I don't recall if it was exactly
8 corresponding, but it was our realization that the sales force
9 should not be penalized for the slower uptake based on that
10 phenomenon.

11 Q. Okay.

12 And you had mentioned I think just now that the
13 indication for the drug initially was quite a narrow
14 indication, correct, when it first came out before the label
15 is expanded to include naive patients in 2008?

16 Right?

17 A. It was narrower than the competition who had -- yes.

18 Q. So one question: I mean, why didn't the company just
19 wait for the expanded indication? Why did it go forward with
20 this narrow indication that ended up being hard to market?

21 A. That was a question I got a lot especially from my
22 research colleagues, and the answer is a simple one for me
23 because if you look at our credo, it wasn't first do good.
24 This was a drug that was developed for patients who were
25 resistant to therapy, meaning that these patients were on

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1 death's door, and to withhold that product from the
2 marketplace because of a commercial outcome would be
3 inconsistent with our credo.

4 So my decision, and that decision was supported
5 wholeheartedly by my people I reported to all the way up to
6 the CEO, was we have no doubt we're going to launch as soon as
7 we can.

8 Q. Okay.

9 What was the concern about what would have happened if
10 you had delayed the launch?

11 A. Well, "concern" might not be the right word. It's just
12 you would be -- you have a drug that's approvable for a
13 segment of patients that desperately need a new protease
14 inhibitor.

15 Q. So is it fair to say the decision to launch early, even
16 with a narrow indication, was driven by considerations of
17 patient health and safety?

18 A. Absolutely.

19 Q. All right.

20 Now, during that time, there's been testimony that it
21 was a disappointing juncture in the -- in the company's
22 marketing Prezista, right, the missing of the forecast.

23 Do you remember that?

24 A. It was disappointing, yes.

25 Q. Okay.

CROSS - MATTES - KLEIN

1 You know there have been -- there's been testimony and
2 references to the fact that some of the employees instead of
3 calling you Glenn Mattes, called you Glenn mad at us?

4 Have you heard about that?

5 A. I heard that. I've also heard that from my children, so,
6 yes. It's an easy one, and they turned out okay, so...

7 Q. What was -- what's your -- how would you describe your
8 management style?

9 A. So I have high expectations of myself, okay? I believe
10 in accountability strongly, so I hold myself accountable for
11 what -- in life, professional and personal, to what I
12 should -- what people expect of me and what I'm accountable
13 for from a functional standpoint. So I do hold people
14 accountable.

15 I also value how you get things done, the integrity
16 base of how you operate, but I do have -- hold people
17 accountable. I do have high expectations, as I said, of
18 myself and my organization. People get paid to do a job and
19 produce a result, and they should be accountable for that.

20 Q. All right.

21 I want to touch on another issue relating to the launch
22 of Prezista and later Intelence.

23 In connection with launching a new product like
24 Prezista, one thing -- is it correct to assume that one thing
25 you have to determine is how to -- how to price the drug?

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1 A. That -- that is part of the strategy, yes.

2 Q. And for Prezista in 2006, how did you determine how to
3 set the price of that medicine?

4 A. So the first thing that we did as a team was to engage
5 with the HIV and AIDS community, and there was a group of
6 people that that were -- I guess we call them activists. They
7 were extremely vocal about how drugs should be priced, how
8 drugs should be made available to patients.

9 Many of these patients are at death's door. They can't
10 afford the drugs. It was a very virulent time, you know.
11 People were going to pharmaceutical companies with caskets and
12 vials of blood.

13 And it was clear that in order for us to -- at least to
14 me and my team, it was very -- it was very important that we
15 connect with these folks to, first of all, understand their
16 points of view and get feedback about how -- feedback and
17 suggestions, not promising we would abide by those
18 suggestions, but reach out to these folks.

19 So -- and they did advise the company in numerous
20 meetings I had with members of my team or individually that
21 price was a concern, and as that relationship went on, I
22 asked, Well, what would be a price that would -- you would be
23 comfortable.

24 There was a practice in the industry that every new
25 drug, every new protease inhibitor or any drug that came to

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1 market was priced at a premium to the prior drugs that were
2 introduced, 10, 20, 30 percent.

3 And the request made of me to present to the company
4 was, Just don't price it any higher. If you come in at
5 parity, price to the market leader, and you work on our behalf
6 to get reimbursement at the groups called ADAPs that help get
7 reimbursement, I believe, at the state or federal level, we
8 would support that decision, embrace that decision, and that
9 is the decision we took when pricing Prezista.

10 It broke the pattern that the industry had historically
11 done of increase -- every new drug got a higher price.

12 Q. Okay. So you --

13 A. I'm sorry. And they took price increases annually. They
14 asked me to consider staying at that price for a period of
15 time.

16 Q. Okay.

17 So just -- to make sure we understand. So was the
18 final decision to price Prezista at parity with the existing
19 protease inhibitors and not charge a premium?

20 A. That was the decision, yes.

21 Q. Okay.

22 And by doing that, was the company foregoing profits
23 that it could have made if it charged the higher price?

24 A. The pattern being about a 30 percent price differential,
25 yes.

CROSS - MATTES - KLEIN

1 Q. Okay.

2 Why did you do that?

3 A. It was the right thing to document. You've seen our
4 credo and -- there was even -- this may help answer the
5 question.

6 There was even a third or fourth or I think counsel
7 said tenth protease inhibitor on the market. Why? And the
8 answer I got -- I asked the question, and the answer was, If
9 not J&J, who?

10 We had a segment of the patient population that this
11 drug could help, the treatment-experienced patients that were
12 failing. And if not J&J, who?

13 Q. All right.

14 And was there any public recognition of the company's
15 pricing policy in that regard?

16 A. Yes. We -- when -- as soon as the drug was approved, the
17 head of the fair pricing coalition, a gentleman by the name of
18 Martin Delaney, published broadly that he praised the company.

19 I got the credit, it shouldn't have been me, for the
20 pricing we took. We had citations read on the floor of
21 Congress and the Senate by members of both bodies to applaud
22 the company's decision in the way we acted in this space.

23 Q. All right.

24 MR. KLEIN: Mr. Knecht, if we could put up
25 Defendants' Exhibit 8976. Just for -- sorry -- just for the

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1 witness and counsel, please. Take that down.

2 BY MR. KLEIN:

3 Q. Mr. Mattes, do you see on the screen there --

4 MR. KLEIN: Can you take that down, Mr. Knecht? The
5 jury can see it. It came down there first.

6 BY MR. KLEIN:

7 Q. Do you see what's on the screen there, Mr. Mattes?

8 A. There's nothing on my screen.

9 MR. KLEIN: Mr. Knecht, just to counsel and the
10 witness, please.

11 THE WITNESS: I see it now.

12 BY MR. KLEIN:

13 Q. Do you see it now?

14 A. Yes.

15 Q. All right.

16 THE COURT: I don't see it.

17 MR. KLEIN: Your Honor, can we take a short break so
18 we can get this document?

19 THE COURT: Also, do you have -- I was going to give
20 the jurors a ten-minute break anyway at 11:00.

21 Why don't we take the break now. Do you have a lot
22 left on your examination?

23 MR. KLEIN: Not a whole lot, Your Honor.

24 THE COURT: Let's take a recess of ten minutes. I
25 was going to do that anyway.

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1 THE DEPUTY COURT CLERK: Please rise.

2 THE COURT: Folks, be seated.

3 (A short recess occurred.)

4 THE DEPUTY COURT CLERK: Please remain seated.

5 THE COURT: So save me some time. Is there some
6 objection to this document?

7 MR. MARKETOS: I'm just seeing it, Your Honor.

8 THE COURT: All right. Well, I mean --

9 MR. MARKETOS: I don't think so.

10 THE COURT: Okay. It will save me time, then,
11 because we're bringing the jury out, so tell me now.

12 MR. KLEIN: It's a Government record, and we're
13 not -- yeah. It's a page of the Congressional Record.

14 MR. MARKETOS: I don't have an objection.

15 THE COURT: All right. That just makes it easier,
16 then. All right.

17 Mr. Klein, are you going to be done soon?

18 MR. KLEIN: Yes, Your Honor.

19 THE COURT: And, Mr. Marketos, how long do you have
20 on any -- do you have any redirect?

21 MR. MARKETOS: Maybe five minutes.

22 THE COURT: All right. You told me 30 minutes we had
23 left this morning, and that went long, so your five minutes is
24 going to be five minutes, then.

25 MR. MARKETOS: Okay.

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1 THE COURT: We need to be done before noon.

2 MR. MARKETOS: No problem. No problem.

3 THE COURT: Folks? Okay.

4 MR. KLEIN: Yeah. If he's really only got five
5 minutes, no problem.

6 THE COURT: Because my understanding is Mr. Mattes
7 has to be somewhere.

8 MR. KLEIN: That's right.

9 THE COURT: All right. So let's make sure we keep
10 him on time.

11 MR. KLEIN: Yes, Your Honor.

12 THE WITNESS: Thank you, Your Honor.

13 THE COURT: You got it.

14 Since I have you, I'm going to break after Mr. Mattes.
15 I have to be somewhere else in the courthouse at 12:30, so we
16 got to break for lunch where I can do that and be back.

17 MR. MARKETOS: What time is that, Your Honor?

18 THE COURT: My engagement is at 12:30. I probably
19 have to get to the second floor by 12:20, so we can break
20 around 12:15 or so.

21 Do you think -- we won't be done by then?

22 MR. MARKETOS: No. I'm just thinking, Your Honor, if
23 you have to do that -- and we'll do whatever you like.

24 THE DEPUTY COURT CLERK: All rise.

25 THE COURT: We'll talk about it on the break.

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1 (The jury enters the courtroom.)

2 THE COURT: All right. Folks, everyone be seated.

3 Mr. Klein, when you're ready to proceed, you may.

4 MR. KLEIN: Your Honor, move to admit

5 Defendants' 8976?

6 MR. MARKETOS: No objection.

7 THE COURT: So admitted.

8 (Defendants' Exhibit 8976 in evidence.)

9 BY MR. KLEIN:

10 Q. Mr. Mattes, you mentioned Congressional recognition of
11 the company's pricing policy.

12 MR. KLEIN: Actually, Mr. Knecht, can I have the
13 ELMO.

14 BY MR. KLEIN:

15 Q. All right.

16 So Mr. Mattes, do you see here we have the page from
17 the Congressional Record and statements made by the Honorable
18 Donald M. Payne, titled "Tribute to Johnson & Johnson and
19 Tibotec Therapeutics for the Development of a new drug for
20 HIV/AIDS."

21 Do you see that?

22 A. Yes.

23 Q. All right.

24 And do you see the entry starts -- he says,

25 "Mr. Speaker, I rise to congratulate Johnson & Johnson,

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1 Tibotec Therapeutics on its entry into the HIV/AIDS market
2 with the launch of Prezista."

3 Do you see that?

4 A. Yes.

5 Q. All right.

6 And then skipping down a bit, the remarks at the end of
7 his statement. It says, "One of the most challenging
8 obstacles in the care for HIV is finding proper therapies for
9 treatment-experienced patients. Prezista is an important new
10 option for the thousands of people with HIV in the
11 United States who are resistant to more than one protease
12 inhibitor."

13 And it continues. He says, "Additionally, the Fair
14 Pricing Coalition believes that Tibotec Therapeutics has
15 priced Prezista responsibly. This is a particularly
16 thoughtful move on the company's part since it recognizes the
17 crisis of federal funding constraints faced by payers in and
18 out of the Government and the health care system.

19 "I'm pleased to see that the spirit of philanthropy has
20 not eluded the makers of this much needed drug by putting the
21 needs of patients first."

22 Do you see that?

23 A. Yes.

24 Q. Was this the Congressional citation that you were
25 referring to in your remarks?

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1 A. Yes.

2 Q. Okay.

3 And is the description of the pricing decisions and the
4 principles that inform them consistent with how you decided to
5 price -- how the company decided to price Prezista?

6 A. The company, yes.

7 Q. All right.

8 I think in one of my earlier questions I may have
9 misspoke, so I just want to be clear.

10 We were talking about spontaneous switches where
11 doctors would spontaneously switch between medicines and might
12 spontaneously prescribe drugs off-label.

13 Do you remember that?

14 A. Yes. The -- the word "spontaneous" might not be
15 appropriate, but they can decide to switch a patient who's
16 treatment experienced, which is on-label, or they can decide
17 to do -- prescribe however they want.

18 Q. And just to -- because this is what I'm leading up to,
19 but just to be clear, Mr. Mattes, were the -- were the doctors
20 who were prescribing Prezista and Intelence off-label -- to
21 your understanding, were they doing that as result of
22 off-label promotion?

23 A. No.

24 Q. Okay. All right.

25 We talked a little bit about the pricing decisions

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1 around Prezista. The company launched Intelence in 2008 as
2 well.

3 Correct?

4 A. Yes.

5 Q. Okay.

6 And similarly, is it fair to say you would have had to
7 determine pricing for Intelence when that launched as well?

8 Is that right?

9 A. Yes. The same process was put in place.

10 Q. Okay.

11 And what -- what decision ultimately was reached about
12 Intelence pricing?

13 A. I don't remember specifically how we priced it. It was
14 at parity or maybe with a slight premium. I don't recall
15 specifically, but it was definitely endorsed by the activists'
16 fair pricing committee.

17 Q. Okay.

18 Would it be fair to say that the price for Intelence on
19 launch had a lower premium over prior drugs than was the
20 industry standard at the time?

21 A. I don't recall specifically, but I believe so.

22 Q. Okay.

23 Do you recall whether there was Congressional
24 recognition of that pricing decision?

25 A. Not specifically.

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1 Q. Okay.

2 Let me see if we can refresh your recollection.

3 MR. KLEIN: Can we put up just for the -- is there
4 going to be an objection -- can we put up just for the witness
5 Defendants' 8977, just for the witness and counsel, please.

6 THE COURT: I lost it.

7 THE WITNESS: As did I.

8 THE COURT: Neither of us have it now.

9 THE WITNESS: There it is.

10 THE COURT: We're back.

11 MR. KLEIN: Okay. If we -- all right. If we flip
12 ahead to page E66. Mr. Knecht, the page at the top.

13 BY MR. KLEIN:

14 Q. Mr. Mattes, you'll see the statement of the honorable
15 G.K. Butterfield of North Carolina.

16 Do you see that?

17 A. Yes.

18 Q. And do you see where Mr. Butterfield says on a
19 Congressional Record, "I rise today to commend and
20 congratulate Tibotec Therapeutics for" --

21 THE COURT: Hold on. Is this admitted?

22 MR. KLEIN: Not yet, Your Honor.

23 THE COURT: You can't read out of the document.

24 MR. KLEIN: Okay.

25 BY MR. KLEIN:

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1 Q. Does this refresh your recollection, Mr. Mattes --

2 A. Yes, it does.

3 Q. Hold on. Let me finish my question.

4 Does this refresh your recollection as to whether

5 Janssen --

6 THE COURT: Let me ask you this: Is this a

7 Government record similar to the last --

8 MR. KLEIN: It's the exact same --

9 THE COURT: So is there an objection to this?

10 MR. MARKETOS: There is no objection.

11 THE COURT: All right. Now it's admitted.

12 Mr. Klein, you can publish it now.

13 MR. KLEIN: Okay. Let's publish, please.

14 (Defendants' Exhibit 8977 in evidence.)

15 BY MR. KLEIN:

16 Q. All right. You see the comments of Mr. Butterfield?

17 A. Yes.

18 Q. Actually, I'll --

19 MR. KLEIN: Mr. Knecht, I'll use the ELMO again,

20 please.

21 BY MR. KLEIN:

22 Q. I've highlighted some portions here.

23 So Mr. Butterfield says, "Madam Speaker, I rise to

24 commend and congratulate Tibotec Therapeutics for their

25 innovation and corporate responsibility in developing new

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1 treatments for people living with HIV/AIDS."

2 And you see right under that, it refers to Intelence --
3 the launch of Intelence.

4 Do you see that?

5 A. Yes.

6 Q. All right.

7 The statement goes on to say, "Tibotec Therapeutics is
8 also a leader in reaching out to unserved communities highly
9 impacted by HIV."

10 Do you see that?

11 A. Yes.

12 Q. Was that a priority for the company while you were
13 president?

14 A. Yes. It was one of many priorities but something that I
15 think we -- we wanted to serve all stakeholders, and the
16 community was an integral part of our stakeholders.

17 In fact, we -- we put in a group of folks -- I think
18 they were called community liaisons -- and the sole purpose of
19 those folks was to work some of the major HIV hubs where there
20 were a lot of patients, helping other nonprofits provide
21 services to their constituency.

22 They would -- there's no goals, no objectives. There
23 was no ROI associated to their work. They were there
24 completely to serve the community and where we could with our
25 resources provide help to those -- those folks. And, yes.

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1 Q. You can see at the bottom of the statement it says,
2 "Finally, Tibotec Therapeutics acted responsibly in pricing
3 Intelence, a fact recognized by many leaders in the HIV
4 community.

5 "In fact, one leading HIV patient advocated stated,
6 'With the introduction of Intelence, Tibotec Therapeutics has
7 demonstrated exceptional leadership in working with the HIV
8 community in an effort to address pricing and access issues.

9 'Tibotec has repeatedly recognized the necessity of
10 responsibly pricing HIV products and should be commended for
11 its leadership in this regard.' "

12 Do you see that?

13 A. Yes.

14 Q. Okay.

15 Does this refresh your recollection as to how the
16 company priced Intelence upon its launch?

17 A. Yes.

18 Q. Mr. Mattes, I think --

19 MR. KLEIN: You can take that down.

20 BY MR. KLEIN:

21 Q. Mr. Mattes, I think you're aware that there are -- there
22 have been allegations in this case that you masterminded a
23 nationwide conspiracy to market Prezista and Intelence
24 off-label, to market Prezista improperly with respect to
25 lipids, and to essentially bribe doctors through speaker

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1 bureau payments.

2 Are you aware of that?

3 A. Yes.

4 Q. Did any of that happen?

5 A. No.

6 Q. Were there multiple stakeholders within the company that
7 would have been checks on any attempt to do such a thing?

8 A. The reason I can answer in the affirmative to the first
9 question is because of those checks and balances.

10 Q. Okay.

11 What -- what were those?

12 A. Well, we had legal, regulatory, other people, functions,
13 groups of folks that were responsible for the approval of
14 materials, anything that went -- that represented the company
15 or our products to customers.

16 Nothing went out the door that wasn't reviewed. And my
17 management philosophy was that was a check for me that we were
18 on -- we were not violating any off-label -- or doing anything
19 that was off-label.

20 Q. Did you ever direct anyone to market any Prezista or
21 Intelence off-label in any way?

22 A. No.

23 Q. Did you ever direct anyone to misuse speaker programs as
24 has been alleged in this case?

25 A. No.

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1 Q. All right.

2 Is it plausible to you that such a thing could have
3 happened given the checks and balances you've described, given
4 the constant interaction that the staff had -- the field force
5 has with doctors, and not a single person reported it?

6 A. Well, when -- I can -- confident what went out the door
7 was compliant. What happened in certain areas of the company
8 that might have not embraced that direction -- I can't sit
9 here categorically and say nothing went on.

10 But if we learned of it, it would have been addressed.

11 Q. All right.

12 Did you learn of any such thing happening?

13 A. I don't recall. It's possible that certain things were
14 brought to my attention. It may not only be possible, it may
15 be probable. I don't recall. Again, I wish I can tell you,
16 but I don't recall anything specifically that came to us.

17 I'm not saying it didn't come to my desk, but I can't
18 recall.

19 Q. You don't recall anything like that?

20 A. No. I don't recall any specifics.

21 Q. Mr. Mattes, I think there's been a suggestion in this
22 case that the company put profits before people, particularly
23 marketing the drug using speaker programs.

24 How do you -- how do you react to that accusation?

25 A. On the past question, I don't recall. It doesn't mean

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1 that something didn't hit my desk. I just want to make that
2 clear.

3 To your question -- can you rephrase it? Sorry. I was
4 still thinking about the other answer.

5 Q. Yeah. No problem.

6 So the question was: There's been an allegation in
7 this case or a suggestion that the company put profits over
8 people.

9 How do you respond to that kind of insinuation?

10 A. Johnson & Johnson is a business. Tibotec/Janssen is a
11 business. By putting profits before people, I cannot say
12 that's what -- that we did that.

13 You look at our credo; you look at how we acted. If we
14 wanted to put profits before people, we would have priced
15 30 percent higher than Reyataz, whichever the product was.

16 Q. Okay.

17 MR. KLEIN: Just one moment, Your Honor.

18 (Brief pause.)

19 MR. KLEIN: Thank you, Your Honor. No further
20 questions.

21 THE COURT: Okay. Thank you, Mr. Klein.

22 Mr. Marketos, any redirect?

23 MR. MARKETOS: Just briefly, Your Honor.

24 THE COURT: All right.

25 MR. MARKETOS: Can we switch to the ELMO, please,

—REDIRECT - MATTES - MARKETOS—

1 Ms. Johnson. Thank you.

2 (REDIRECT EXAMINATION BY MR. MARKETOS:)

3 Q. Mr. Mattes, just very quickly, sir: You just gave some
4 testimony in response to questions from your lawyer about some
5 pricing issues, how it was that the price of Prezista and the
6 price of Intelence were accomplished in a way that received
7 praise from two specific House -- members of the House of
8 Representatives.

9 Do you recall giving that testimony?

10 A. Yes.

11 Q. Just so the members of the jury are clear, there's no
12 allegations relating to the pricing of drugs that are relevant
13 to this dispute.

14 Do you understand that?

15 A. Yes.

16 Q. All right.

17 As I understand it, your point was we did a good thing
18 with this pricing as reflected by the comments of these
19 congresspeople.

20 Right, sir?

21 A. Those are an example of the feedback we got.

22 Q. Yes, it was an example of the feedback. I just noticed
23 that the comments were almost identical that were made by the
24 Honorable Donald Payne and the Honorable G.K. Butterfield. It
25 was actually written by Janssen for those congresspeople to

—REDIRECT - MATTES - MARKETOS—

1 give on the floor of the House.

2 Right?

3 A. I'm not aware of how these statements were made. I had
4 nothing do with what the words were or the fact that they were
5 made.

6 Q. Are you aware of the fact that the Johnson & Johnson
7 political action committee committed -- contributed thousands
8 of dollars to Mr. G.K. Butterfield?

9 A. No.

10 Q. Are you aware of the fact that Johnson & Johnson's
11 political action committee contributed more than \$6,000 to
12 Mr. Donald Payne, honorable representative from the state of
13 New Jersey, in the year that he made those statements?

14 A. No.

15 Q. Or that it contributed more than \$20,000 between the time
16 period of 2000 to 2014?

17 A. No.

18 Q. I think you said, sir, that the biggest reason for the
19 miss in the forecast was that you'd made a mistake in terms of
20 assuming switches and how quickly those switches would be
21 corrected and patients would switch to your company's drugs.

22 Is that right?

23 A. How quickly the patients would -- it would be
24 implemented, how many patients. Sorry. Yes, discussion of
25 the word "implemented."

—REDIRECT - MATTES - MARKETOS—

1 Q. Al right.

2 So that wouldn't have been -- that would not have been
3 something that was the fault of the sales representatives out
4 in the field.

5 Right?

6 A. No.

7 Q. All right.

8 So putting pressure on sales representatives to make a
9 forecast that is wrong because of an assumption that you had
10 made would be a bad idea.

11 Do you agree?

12 A. Yes, and we lowered the forecast.

13 Q. Off-label -- as I understand it, your forecast included
14 off-label sales, but that was done for some purpose other than
15 promoting off-label sales from promotion off-label.

16 Is that right?

17 A. All demand needed to be accounted for in doing a
18 manufacturing forecast.

19 Q. Okay.

20 So let me just reframe my question.

21 You testified that there were off-label sales of these
22 drugs in Janssen's forecasts for the sale of Prezista and
23 Intelence just a moment ago.

24 Right, sir?

25 A. Yes.

—REDIRECT - MATTES - MARKETOS—

1 Q. And it's your testimony, though, that the reasons that
2 off-label sales of Prezista and Intelence were included in the
3 forecast for the company were because of an issue with
4 related -- relating to manufacturing and supply.

5 Is that right?

6 A. And other financial forecasting needs the company has to
7 report and project. But the most important is that you have
8 enough product to supply the users.

9 Q. Yes, sir.

10 And other financial needs.

11 Is that right?

12 A. Other financial reporting needs.

13 Q. Okay, sir.

14 MR. MARKETOS: Let's take a look, if we can switch
15 back to the screen, please, Ms. Johnson.

16 BY MR. MARKETOS:

17 Q. You testified in response to questions from your counsel
18 about 1787.

19 MR. MARKETOS: If we can pull up 1787, please,
20 Relators' 1787, Ms. Johnson. If we can go down to the --
21 let's see -- the slide relating to the \$92 million target.

22 BY MR. MARKETOS:

23 Q. Here's one I need to understand, sir. If we turn to
24 Slide 10, please.

25 At the bottom of this deck, like we've seen up here on

—REDIRECT - MATTES - MARKETOS—

1 the bottom of many of Janssen's decks, is a statement,
2 "Promotion will only occur against on-label uses."

3 Right, sir?

4 A. Yes.

5 Q. And, of course, the slide itself is projecting
6 \$92 million for off-label sales.

7 Right?

8 A. Naive share -- it looks like it's saying sales that are
9 coming from the naive patients segment.

10 Q. What actually matters for the purposes of this case is
11 what Janssen was actually doing and not what it stamped on its
12 documents in order to protect itself from liability.

13 Do you agree with that?

14 A. No, I don't.

15 Q. Okay.

16 Let's --

17 A. I think that's preposterous.

18 Q. Let's take a look at RX-139. There was a careful
19 communications policy. We've seen this document.

20 Have you seen this document before, sir?

21 A. I don't recall.

22 Q. All right.

23 Let's take a look at page 3. There's a discussion
24 about emails in particular, "Approximately a hundred million
25 emails are generated per month."

—REDIRECT - MATTES - MARKETOS—

1 Do you see that.

2 A. Yes.

3 Q. "All written communications matter. Everything is a
4 document in the eyes of the law."

5 Right?

6 A. Yes.

7 Q. "Emails and other written documents are discoverable by
8 plaintiffs' attorneys" --

9 A. Yes.

10 Q. -- "and Government regulators, and emails can last
11 forever."

12 Right, sir?

13 A. Yes.

14 Q. It was actually -- you were actually taught to be careful
15 with the things you were putting in writing.

16 Right, sir?

17 A. Yes.

18 Q. If we take a look at --

19 MR. MARKETOS: Let's go back to 1787 very quickly and
20 Slide 10, please, Ms. Johnson.

21 BY MR. MARKETOS:

22 Q. Again, sir, you're talking about a share target that
23 cannot come from off-label promotion.

24 Is that right?

25 A. Yes.

—REDIRECT - MATTES - MARKETOS—

1 Q. So you're targeting sales that have to happen by
2 themselves.

3 A. Yes.

4 Q. But \$92 million worth?

5 A. In this case, yes.

6 MR. MARKETOS: If we take a look at DX-2004, I just
7 wanted to turn to page 5 of that document.

8 BY MR. MARKETOS:

9 Q. The point of not including off-label forecasting and
10 off-label sales in your forecast is so that they don't turn
11 into sales tactics.

12 Right, sir?

13 That's exactly had the guidance document that your
14 counsel just read to you tells you.

15 A. Does it say specifically -- does it say specifically,
16 sir, what you just said?

17 Q. "However to the extent the sales forecast includes
18 off-label sales projection, it should not be used as the basis
19 for developing tact" --

20 A. Yes.

21 Q. I'm sorry.

22 -- "developing tactical sales or marketing plans to
23 drive off-label sales growth."

24 Right?

25 A. Yes.

—REDIRECT - MATTES - MARKETOS—

1 MR. MARKETOS: If we take a look at DX-2083, please.

2 BY MR. MARKETOS:

3 Q. All right.

4 You were asked questions from counsel regarding this
5 exhibit.

6 MR. MARKETOS: And if you could just please blow up
7 that second paragraph.

8 BY MR. MARKETOS:

9 Q. Just to reorient us, sir, you were talking about your
10 understanding that what went out into the field had been
11 approved by the FDA specific to messages that were delivered
12 to doctors.

13 Right?

14 A. No.

15 Q. You were not talking about that?

16 A. I was talking about they were approved by our internal
17 review committee.

18 Q. I am sorry, sir. I must have misunderstood.

19 I thought what you said in response to this particular
20 email was it said "The draft version you were originally
21 trained on has changed as a result of Prezista's final label
22 and comments from the FDA."

23 You weren't intending to imply in your testimony that
24 your company had received comments from the FDA approving of
25 these messages, were you?

—REDIRECT - MATTES - MARKETOS—

1 A. I don't recall whether they did or they didn't, but I
2 don't think I was implying that.

3 Q. Okay.

4 What you were talking about was your company, Janssen,
5 approved its own messages.

6 Right, sir?

7 A. We were responsible for -- yes, for that.

8 Q. Okay.

9 And if there were some approvals from the FDA, you
10 would expect to see that somewhere, some day in writing.

11 Is that fair?

12 A. I believe the mechanism was to share all materials at
13 some point with the agency.

14 Q. If you were to have received approval, you would expect
15 it would exist in writing somewhere.

16 Fair?

17 A. I don't know the answer to that question.

18 Q. All right, sir.

19 I believe you said that there was -- this product and
20 your goals were driven by patient health and safety.

21 Is that what I heard you say?

22 A. Were -- if I said it, then I said it. It was driven by
23 meeting patients' therapeutic needs.

24 MR. MARKETOS: If we turn to RX-132, please. It's in
25 evidence.

—REDIRECT - MATTES - MARKETOS—

1 And if we turn to slide 7, please.

2 BY MR. MARKETOS:

3 Q. At the time that Janssen --

4 A. Excuse me, sir. I'll -- I'll answer your question. I'm
5 sorry. My bad.

6 Q. Thank you.

7 We've taken a look at this document. There's a
8 reference to the lipids issue in the middle.

9 Do you see that?

10 A. Yes.

11 Q. All right.

12 And just so that we're clear, sir, we talked about
13 Janssen wanting to eliminate the perception of Reyataz as most
14 lipid friendly, right, during the course of your testimony?

15 A. I don't recall that specifically. There was -- we talked
16 a lot about lipids. I don't recall that we had talked about
17 that specifically, but okay.

18 Q. But what Janssen knew was that 30 percent of patients
19 that were switching for tolerability reasons had
20 hyperlipidemia.

21 Right, sir?

22 This is what Janssen itself recognized in its own
23 strategy documents?

24 A. This is a doc- -- I don't know where this document was
25 presented. This -- I don't know if it's accurate or not.

—REDIRECT - MATTES - MARKETOS—

1 Q. Okay.

2 Well, at least from this document that's in evidence,
3 we can see that 30 percent of patients switching for
4 tolerability reasons have hyperlipidemia.

5 A. According to Mr. Kozub.

6 Q. According to the head of your marketing department at the
7 time.

8 Right?

9 A. I don't remember if it was head of the market, but he was
10 a member of our marketing department.

11 Q. Okay, sir.

12 And according to him -- and this is the type of
13 information you relied upon in making decisions for the
14 company.

15 Right?

16 A. Part of the consideration, yes.

17 Q. If patients were switched from a drug like Reyataz to a
18 drug like Prezista, that could cause hyperlipidemia, those
19 patients might suffer harm.

20 Do you agree with that premise?

21 A. I am not a physician. That's a physician's decision. I
22 can't confirm or deny -- I'm not a doctor.

23 Q. If you make a commercial decision to target patients that
24 the drug might be bad for, that would not be good for
25 patients.

—REDIRECT - MATTES - MARKETOS—

1 Do you agree?

2 A. In general, yes. Not specific to this.

3 I don't know the specifics of -- I don't know what
4 you're asking me. Okay. I really don't.

5 Q. Okay, sir.

6 Now, I -- last question. I know we need to get you out
7 of here, sir.

8 I thought I heard you say that it was not plausible
9 that Janssen would be engaged in an off-label marketing scheme
10 given the checks and balances inherent within Janssen.

11 Is that right?

12 A. Say that one more time, please.

13 Q. I just --

14 A. No, I'm asking you to please repeat the question.

15 Q. Sure. I just want to make sure I understood your
16 testimony.

17 You testified in response to questions from your
18 counsel that a scheme to market off-label and a scheme to
19 induce doctors to prescribe more Prezista and Intelence was
20 not plausible given checks and balances inherent within
21 Janssen.

22 A. That's one -- that's the main reason for believing it was
23 not plausible.

24 Q. And you're talking about checks and balances like
25 healthcare compliance department, legal and regulatory.

—REDIRECT - MATTES - MARKETOS—

1 Is that right?

2 A. Yes.

3 Q. All right.

4 Those are entities that had a dotted line reporting
5 structure to you.

6 Right, sir?

7 A. Yes.

8 Q. You had -- just to be clear, you had a legal and
9 regulatory department, and you had a compliance department
10 when you were at Ortho-McNeil.

11 A. Yes.

12 Q. Did you not?

13 A. Yes.

14 Q. I thought I heard two different things. You said it's
15 probable that it was brought to your attention that there were
16 off-label marketing activities going on but you just can't
17 remember the specifics?

18 A. We talked about --

19 MR. KLEIN: Objection.

20 BY MR. MARKETOS:

21 Q. I'm sorry. Correct me if I'm wrong.

22 THE COURT: What's the -- when you say "objection,"
23 what's the basis?

24 MR. KLEIN: Mischaracterizes the testimony.

25 THE COURT: Well, why don't you ask him whether

—REDIRECT - MATTES - MARKETOS—

1 that's his testimony. I thought that's what you were doing.

2 MR. MARKETOS: I was.

3 THE COURT: All right. I'll ask him to rephrase.

4 Objection sustained. Just ask him so you can
5 characterize it properly.

6 BY MR. MARKETOS:

7 Q. Correct me if I'm wrong, I thought I heard you testify
8 just a few moments ago that it might be probable that issues
9 related to off-label promotion were brought to your attention
10 while you were the president of Janssen but you don't recall
11 the specifics.

12 Is that what you testified --

13 A. I don't recall the specifics.

14 Q. Well, those are two different issues. So let's start
15 with the first one.

16 It's probable that issues related to off-label
17 promotion of Prezista and Intelence were brought to your
18 attention.

19 A. Probable, but not certain because I don't recall.

20 Q. Okay.

21 More likely than not. That's what probable means.

22 A. Then thank you for the definition. My answer is probable
23 but not certain because I don't recall.

24 Q. All right.

25 Can you tell the members of the jury, as we sit here

—REDIRECT - MATTES - MARKETOS—

1 today, what you did in response to any issues related to the
2 off-label promotion of Prezista and Intelence while you were
3 the president of the company?

4 A. I don't recall specific issues that were presented to me,
5 so I can't -- I can't answer the question.

6 MR. MARKETOS: All right. Thank you.

7 Nothing further for this witness, Your Honor.

8 THE COURT: All right. Mr. Mattes, you are excused
9 from the trial. Thank you.

10 THE WITNESS: Thank you.

11 THE COURT: Mr. Marketos, do we have the next
12 witness?

13 MR. MARKETOS: Yes, Your Honor.

14 THE COURT: Let's keep it moving. Let's keep
15 continuing.

16 MR. MARKETOS: Thank you, Your Honor. Relators call
17 Professor George Sillup.

18 THE COURT: All right.

19 Sir, my courtroom deputy is just going to swear you in.
20 Okay?

21 (**PROFESSOR GEORGE SILLUP**, HAVING BEEN DULY SWORN/AFFIRMED,
22 TESTIFIED AS FOLLOWS:)

23 THE DEPUTY COURT CLERK: Please state your name and
24 the spelling of your last name for the record.

25 THE WITNESS: George P. Sillup. S, as in Sam,

SILLUP - DIRECT - MARKETOS

1 I-L-L-U-P.

2 THE COURT: Sir, you can have a seat.

3 THE WITNESS: Good morning, Your Honor.

4 THE COURT: Good morning.

5 (DIRECT EXAMINATION BY MR. MARKETOS:)

6 Q. Good morning, Professor Sillup. How are you?

7 A. Doing well.

8 Q. Sir, would you please introduce yourself to the members
9 of the jury.

10 A. I'm George Sillup. I'm working in academia now. I
11 worked in the pharmaceutical industry for 28 years before
12 transitioning to academia.

13 Q. Professor Sillup, I'm going to try to stick and move on
14 your testimony today, sir. We -- we've all been here for a
15 while, so I'm going to try not to belabor a lot of points on
16 your background and your education if you'll bear with me on
17 that. Okay?

18 MS. BROWN: And, Your Honor, can I interrupt for a
19 send. Can I have a copy of the slides you're about to show or
20 you're showing. I haven't seen what is going up on the
21 screen. Thanks.

22 THE COURT: Hey, folks, talk to me not to each other.
23 What's the issue?

24 MS. BROWN: Your Honor, there are things going over
25 the screen I just haven't seen. I was wondering if --

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1 THE COURT: Okay. Are these demonstratives?

2 MR. MARKETOS: Yes, they are demonstratives.

3 THE COURT: Is there a hard copy?

4 MR. MARKETOS: They're being printed. The printer is
5 having an issue and so we're going to email them to counsel.

6 THE COURT: All right. Do you have them on the
7 screen, Ms. Brown?

8 MS. BROWN: Yes, Your Honor. I can see them as they
9 come up, and I'll let the Court know if there's an issue.

10 THE COURT: Oh, I see, you can't -- how many slides
11 are there?

12 MR. MARKETOS: About 25 or 30, Your Honor. I need to
13 check.

14 MS. BROWN: I'm happy just to get us through lunch,
15 Your Honor. If I see an issue, I'll pop up --

16 THE COURT: All right. If there's an issue, then,
17 pull the slide off the screen and I'll deal with it. All
18 right.

19 MR. MARKETOS: Sure. Thank you, Your Honor.

20 THE COURT: And I do think there's a technical issue
21 going on internally in the courthouse.

22 MR. MARKETOS: Yes.

23 THE COURT: We lost printer and scanning access in
24 chambers, and I don't know if IT has resolved that issue, and
25 that's probably impacting the printer there.

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1 So we're going to move forward, but if there's an
2 objection, let me know and immediately pull the slide off.

3 MR. MARKETOS: Thank you, Your Honor.

4 THE COURT: All right.

5 BY MR. MARKETOS:

6 Q. All right.

7 Professor Sillup, briefly, if you would, sir, can you
8 describe your education, beginning with your appointment to
9 West Point?

10 A. Coming from high school, I received a military -- my
11 father died from a service-connected death. I got an
12 appointment to West Point. Left there the second semester of
13 my freshman year and on to help with a family who was very
14 ill.

15 I transferred to Wilkes -- to Kings College and then
16 from there to Wilkes College, largely attracted to play
17 collegiate football.

18 From that point, after graduation and working in the
19 pharma industry, I went to -- I left Johnson & Johnson and
20 went to Drexel University for a master's degree. And then
21 returned to work in industry. And after about five years, I
22 had begun my doctorate, which I received in 1990.

23 At that point, I had begun to think about the
24 background and working in industry, and I wanted to make a
25 transition to academia. And I wanted to be not just the old

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1 guy from industry but someone respected by my colleagues and
2 peers in academia, and I transferred full time in 2004.

3 Q. Are you currently a professor -- are you currently a
4 professor at St. Joseph's University at the Haub School of
5 Business, sir?

6 A. Yes, I am.

7 Q. And can you tell the members of the jury what you teach?

8 A. I teach pharmaceutical marketing, forecasting, business
9 ethics.

10 Q. And for how long have you been a full-time tenured
11 professor teaching pharmaceutical marketing at the School of
12 Business at St. Joseph's?

13 A. 20 years. And during that time, in addition to teaching,
14 we're encouraged to do consulting and work with the
15 pharmaceutical industry. So we remain current and bring that
16 to the classroom.

17 Q. All right, sir.

18 So you currently hold a bachelor's in psychology and
19 political science and master's degree in human behavior and a
20 doctorate in human behavior.

21 Is that fair?

22 A. Yes, it is.

23 Q. As I understand it, you had 28 years in -- of experience
24 yourself in the pharmaceutical industry.

25 Is that right?

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1 A. Yes.

2 Q. Can you tell us briefly about your actual industry
3 experience that you gathered both before and after you became
4 a professor?

5 A. Yes. I started in sales with Colgate-Palmolive. It was
6 very commercial. I wanted to do something beyond stocking
7 pharmacies. So I worked -- was hired by a division of Johnson
8 & Johnson, sold blood and blood reagents in the diagnostic
9 realm. I did that for about two years.

10 Went back for my master's. I did research for
11 Honeywell bringing -- I'll call them energy management systems
12 into hospitals and healthcare.

13 I returned to Johnson & Johnson, to one of the
14 corporations they acquired, Extracorporeal. We kept and
15 launched the company Theracos around the new therapy.

16 From there I went to Johnson & Johnson Corporate, and
17 then I was recruited away to Hoffmann-La Roche. Worked there
18 for a couple years. Started a company. Unplugged the
19 company, and then went to Wyeth Pharmaceuticals.

20 Q. And during that time you spent 28 years in the
21 pharmaceutical industry, were you yourself involved in
22 developing forecasts for pharmaceutical products like drugs?

23 A. Yes, I was.

24 Q. And did you yourself ever take part in selling those
25 drugs to doctors and patients?

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1 A. Yes, I did.

2 Q. And, sir, were you also involved in putting together
3 strategies for companies like Johnson & Johnson and others?

4 A. Yes, I did.

5 Q. And do you teach that now?

6 A. Yes, I do.

7 Q. Can you describe what type of subject matter you teach as
8 it relates to the pharmaceutical market?

9 A. Well, with pharmaceutical marketing, crafting a forecast
10 is a process. I always start with the bottom up, and that's
11 with the approved label. From there you look at the size of
12 patient population. Those who could be treated, and they are
13 special customers. They're patients in need.

14 You look at that, and then you're also thinking about
15 the competitive environment. What other products or drugs are
16 on the market available?

17 And then lastly, the multiplier is price. What are you
18 going to charge for the product. And in a sense the strategy,
19 the forecast becomes the quantification. Adding dollars to
20 the strategy is nothing more than a plan. So you're adding
21 dollars to your plan.

22 Q. Professor Sillup, you also mentioned that you teach
23 business ethics. Can you explain what you teach as it relates
24 to that subject?

25 A. Basically, business ethics, not unlike the elements of

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1 the credo, are designed to -- it's okay to make money, but how
2 you make it is very important. So we preach and talk about a
3 triple bottom line of people, planet and, of course, profit.

4 Q. And is there anything wrong with a company making a
5 profit if it's a for-profit enterprise?

6 A. Absolutely not. In fact, you have to do that. That's
7 important. That's the lifeblood of a corporation. But as
8 part of continuing that, you must think about how you're doing
9 that as well as treating your employees.

10 Q. And, sir, you mentioned that you spent several years at
11 Johnson & Johnson, and you just mentioned the Johnson &
12 Johnson credo. Tell us a little bit what your experience was
13 like when you were at Johnson & Johnson.

14 A. I thought the credo was a very insightful document for
15 me. Basically started with an onboard training. As part of
16 being hired, you got an orientation to the credo, and I
17 thought, gee, this is interesting. Is this something that is
18 just window dressing, or they really believe in it and do we,
19 in a sense, walk the walk? And I was very reinforced by how
20 much that entered into day-to-day business practice.

21 Q. If we take a look, sir, at the summary of the opinions
22 that you're going to offer to the members of the jury in this
23 case, sir, we've got a summary slide here.

24 And the first opinion that you're going to offer, can
25 you read that to the members of the jury?

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1 A. Yes.

2 "Janssen's off-label marketing caused physicians to
3 prescribe Prezista and Intelence off-label."

4 Q. And the second summary of your opinion, sir.

5 A. "Janssen's specific off-label messages caused physicians
6 to prescribe off-label for those specific reasons."

7 Q. And the third summary of your opinion, sir?

8 A. "Janssen's off-label messaging directed at physicians had
9 a lasting impact on physicians' prescribing behavior."

10 Q. Let's take a look, sir.

11 Can you briefly describe for us the evidence that you
12 considered in order to reach an opinion as an expert in
13 pharmaceutical marketing?

14 A. Yes. I reviewed several documents produced in
15 litigation; a number of depositions and exhibits, such as
16 highlighted here the transcripts of depositions, academic
17 literature, regulations, Government enforcement actions, and
18 trial testimony and exhibits.

19 And the trial testimony has been very helpful to me
20 because I find that it brings to life -- it reinforces the
21 observations I had.

22 Q. Thank you, Professor Sillup.

23 Have you been in this courtroom for the duration of the
24 trial?

25 A. I have.

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1 Q. And you heard each witness testify?

2 A. Yes, I have.

3 Q. And have you been able to consider the exhibits that have
4 been offered to the members of the jury as well?

5 A. Yes, I have.

6 Q. When you were first asked to provide an opinion in this
7 case, you just referenced that you reviewed depositions in
8 this litigation. And I don't need to belabor this point, but
9 that, of course, is sworn testimony of witnesses.

10 Is that right?

11 A. Yes.

12 Q. Did you also review the exhibits, the documents that were
13 shared in those depositions and so the witnesses were
14 questioned on the documents themselves as well?

15 A. Yes.

16 Q. And that was before you were asked to render an opinion
17 in this case?

18 A. Yes.

19 Q. If you take a look at the depositions, just to be clear,
20 did you review all of the fact witness testimony, including
21 from witnesses of the Relators themselves and witnesses who
22 are testifying consistently with the Relators?

23 A. Yes. Yes, I did. Hoping I can remember all of it.

24 Q. Did you also review testimony from witnesses that are
25 being proffered by Janssen in this lawsuit?

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1 A. Yes.

2 Q. And so that's Ms. Brancaccio, Michael Daily, Tony Dolisi,
3 Donna Graham, Matthew Grooms, Mark Gossett, Joseph Holshoe,
4 Mike Iacobellis, Catherine Kaucher, Debbie Kenworthy, Ben
5 Kozub, Glenn Mattes, Jessica Penelow, Michael Shiv,
6 Sara Strand, and Mark Wilhelm.

7 Fair?

8 A. Some of whom we heard -- I heard testimony.

9 Q. You heard from some of these individuals live in this
10 courtroom, including Mr. Mattes and Mr. Iacobellis.

11 Right?

12 A. Yes.

13 Q. All right, sir.

14 Can you describe for us, briefly, the FDA approval
15 process and how you understand it to be relevant to
16 pharmaceutical marketing?

17 A. FDA approval process is a process by which a drug
18 basically provides -- generates data that substantiates its
19 ability to be safe and efficacious. First it has to be safe,
20 and then it has to be efficacious. It has to help the problem
21 it said it can help.

22 The normal process is constructing a protocol, which
23 means, this is the way you're going to use the product for a
24 specific disease.

25 That process then goes out to find a series of, we'll

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1 say, experts in the disease area to do clinical studies. The
2 clinical studies treat the patients in the intended way that
3 the product is planned for use.

4 So, in other words, if a patient is going to be treated
5 once a day, they have a certain phase of the illness, how sick
6 are they? At what phase of illness will you treat? The thing
7 that you can't plan, but you need to watch carefully, are the
8 side effects that occur. This is science. Even though we
9 select the right amount of disease in a patient and the
10 experts who are doing the treatment, you can't plan the
11 outcome. Sometimes you have side effects that are encountered
12 during the clinical study.

13 Meanwhile, envision, you know, the patent clock is
14 ticking, so this is going to take possibly 10, 12 years. And
15 it's significant expenditure, as you can see.

16 Occasionally, the Food and Drug Administration has a
17 fast track for approval. Costs less, takes less. However,
18 the downside of that is you can go fast track and gain
19 approval, but you may not be able to fully explore -- have the
20 number of patients you need to power your study so you can be
21 statistically relevant and have a -- come to a conclusion
22 about the full extent of the drug. You just haven't had the
23 time. Yet, it's still determined by the Food and Drug
24 Administration that it's important to get this product on the
25 market.

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1 Q. And, sir, tell us briefly, if you would, about the
2 clinical studies that are necessary to power a study that
3 ended up becoming an FDA-approved label.

4 A. Well, the norm is two prospective, well-controlled
5 studies, randomized. You heard Dr. Glatt discussing this.
6 The studies are done. They're blinded so you don't know who
7 is getting the actual drug or who is getting the comparative
8 drug. So the studies occur over this period of time, and they
9 generate data. They generate information to substantiate
10 whether or not this product is medically relevant. It's safe.
11 It doesn't hurt someone and it is effective. It can help
12 someone.

13 Q. Thank you, Professor.

14 And tell us a little bit about research and development
15 and marketing budgets in the pharmaceutical industry.

16 A. Well, it's interesting, because, you know, research is
17 the life blood. You're in an industry that's regulated by the
18 Food and Drug Administration. You must do research to
19 continue. That's your future. Your future products.
20 Marketing is, once you have the product available, then you
21 sell the product. The expenditure for marketing eclipses the
22 spending for R&D.

23 Q. And let's take a look at that on the next slide, sir.
24 This is something that you looked at in rendering your
25 opinion.

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1 Can you describe for the members of the jury, in the
2 pharmaceutical industry at large, and in terms of
3 expenditures, what is the total spend on marketing versus
4 research and development?

5 A. Well, as you can see, there's quite a delta difference.
6 More is spent on marketing the product, getting the product
7 out, and you probably have seen what three of every five
8 commercials are -- if you're watching any kind of mainline
9 television, three of every five commercials are rendered about
10 a medical product or a drug.

11 Q. At least from this graph, there was approximately
12 \$120 billion spent by the industry in 2016 on marketing and
13 administrative expenditures.

14 Is that right?

15 A. That's -- that's correct, and about two thirds of that or
16 about 80 being spent on research and development.

17 Q. Okay.

18 So about 50 percent more is spent on marketing
19 pharmaceutical products than it is on researching and
20 developing them.

21 Is that right?

22 A. Yes.

23 Q. Now, sir, what is the purpose of marketing pharmaceutical
24 products to doctors? What is the effect of marketing a
25 product to doctors?

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1 A. Well, the product is something that we can't purchase
2 over the counter. We can go in and buy a bottle of aspirins.
3 When a product deals with a severe medical situation, such as
4 HIV, you're going to rely on a physician and have her or him
5 guide you in the decision whether or not this medicine is
6 appropriate for you.

7 Q. All right, sir.

8 And what is it about -- what are some of the benefits
9 of marketing to a doctor who has a number of patients versus,
10 you know, some other form of marketing, direct to consumer?

11 A. Well, in that case -- if you're marketing to a doctor
12 treating more patients, there's a greater opportunity that he
13 or she will prescribe the drug to more patients or far more
14 patients.

15 Q. And what is the purpose -- why does the pharmaceutical
16 industry spend so much money marketing their products to
17 doctors?

18 A. Because it works. And I think to help, too, to put this
19 on a continuum, think of an expert such as Dr. Glatt. On one
20 end of the spectrum, you have a highly sophisticated
21 university-based physician, and maybe the discussion/sales
22 call is more about awareness of a new product or actually
23 learning from them.

24 On the other end of the spectrum, if a physician is
25 treating perhaps 20 patients a day, he or she relies on the

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1 sales call to learn more in depth about the product and to
2 understand its full capability.

3 They have the package insert, which is the guide to
4 tell you how to sell this product on-label. But sometimes a
5 further explanation by a sales rep will help.

6 So just think of that continuum. On one end, you have
7 Aaron Glatt, highly sophisticated and maybe relying on that
8 for awareness. On the other end, you've got somebody who's --
9 who's very interested, keenly interested in what a
10 representative has to tell them about the product.

11 Q. And, Professor Sillup, does marketing to physicians like
12 those that Janssen marketed to in this case -- tell us about
13 whether or not your field and your expertise has an opinion on
14 whether it works.

15 A. I strongly believe it works. It has a very significant
16 influence. As I said, depending on where someone is on the --
17 on the spectrum, but the approach and working with the
18 physician community is seen as the gateway to the success of
19 your product: Physicians who are treating patients with the
20 drug, if they become someone who appreciates what the
21 pharmaceutical's capability is as well as decides to prescribe
22 that for their patient or patients.

23 Q. Professor Sillup, why would a company like Janssen spend
24 money on a sales force to go and meet with doctors on sales
25 calls or detailing?

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1 A. Well, for the same reason. As I mentioned, it's
2 effective. It works, and it's something that it is -- and I
3 think the thing that's important to understand, too, this is
4 not I'm going to drop some samples and come to see you and ask
5 about your family.

6 This is usually a substantive discussion about the
7 product's merits, talking about what kind of product and what
8 kind of favorable impact this could make for your patient.
9 It's a new therapeutic alternative.

10 Q. Professor Sillup, do the messages that are delivered by
11 sales representatives from pharmaceutical companies influence
12 doctors' prescribing habits?

13 A. Yes.

14 Q. And is that just the opinion of Professor George Sillup?

15 A. No. This -- this is something that -- it's in the
16 literature. You know, I've had my personal experience.
17 Medical institutions have had concern about this to the point
18 where many institutions have restricted access of sales reps.
19 We have --

20 Q. Why is that, sir? I'm sorry.

21 A. Well, if you can go in the institution, you might be able
22 to influence a number of physicians to understand and
23 prescribe your drug.

24 Q. And on that topic, sir, you heard Dr. Glatt testify in
25 this case. He actually does not permit that at his

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1 institution. He doesn't allow sales representatives from
2 pharmaceutical companies to interact with his doctors.

3 Do you recall that?

4 A. Unless you can provide some substantive educational
5 material and discussion.

6 Q. And what is it that certain medical institutions might
7 try to prevent when a sales representative for a
8 pharmaceutical company visits a doctor?

9 A. The influence on physicians.

10 Q. Now, we've heard testimony in this -- some testimony in
11 this case or at least some suggestion that, you know, doctors
12 make their own medical judgment on a patient-by-patient basis.

13 Right, sir?

14 Did you hear that --

15 A. Yes.

16 Q. -- the question on that topic?

17 A. Yes, I did.

18 Q. That completely true?

19 A. Doctors certainly make their decision, but they factor in
20 information that is imparted to them.

21 Q. And what's the purpose of delivering messages to doctors
22 before they have made their prescribing decisions, if you're a
23 pharmaceutical company like Janssen?

24 A. It gives them another alternative. They now are
25 considering -- instead of two drugs, they now can consider a

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1 third and then -- to answer the question what's most
2 appropriate for my patient.

3 Q. And how do the messages that are delivered to the doctors
4 influence their prescribing habits?

5 A. Enhances it. Enhances them.

6 Q. If we take a look at the FDA and DDMAC. What -- what
7 does the Food and Drug Administration and the agencies that
8 oversee pharmaceutical promotions -- what do they believe
9 about the ability of pharmaceutical companies to influence
10 prescribing habits and to influence patients?

11 A. They work hand in glove. The Food and Drug
12 Administration basically approves the use of the product based
13 on the safety and efficacy of the data, which you have. The
14 only thing that you're allowed to present is on-label.

15 So that -- those data go into the package label. You
16 know, that's that little thing that comes in medicine when you
17 get it. It folds up, maybe the size of a dollar bill. When
18 you open it, it will cover the top of your desk.

19 All the information aligned with the study is contained
20 in that package insert or label.

21 I can only promote and talk about that information
22 that's in the label.

23 Q. And what about -- what do you understand about -- let's
24 say, for example, in the industry certain pharmaceutical
25 companies promote off-label in violation of those rules from

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1 the Food and Drug Administration.

2 Are you aware of the type of enforcement actions that
3 the Government agencies, like the Office of the Inspector
4 General and the Department of Justice, take?

5 A. Yes.

6 Q. And are you familiar with whether or not the Office of
7 the Inspector General and the Department of Justice have been
8 active specifically in the pharmaceutical industry for
9 off-label marketing?

10 A. Yes.

11 Q. All right.

12 And how about with respect to kickbacks? Let's talk
13 about that separately, sir.

14 What is it about the payment of money to physicians who
15 are prescribing pharmaceutical companies' drugs that presents
16 concerns in this industry?

17 A. Well, it's an enticement in a sense, Am I buying a
18 prescription rather than having someone be convinced about the
19 medical viability of a pharmaceutical, the way it can help a
20 patient. There may be influence based on financial reward.

21 Q. And, sir, are you aware of enforcement actions that the
22 Department of Justice and the Office of the Inspector General
23 have taken against companies who have paid inducements to
24 physicians to prescribe more of their drug?

25 A. Yes, I am.

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1 Q. And would you describe the federal government as being
2 inactive or active in the pharmaceutical industry in
3 enforcement actions?

4 A. I would say quite active.

5 Q. Sir, let's talk briefly about the notion of off-label
6 marketing and the different forms that it takes.

7 We see on the left here of your slide the label for
8 Prezista and certain adverse reactions.

9 Do you see that?

10 A. Yes.

11 Q. Are you aware of the fact, having studied this case, that
12 there were adverse reactions identified for this drug?

13 A. Yes.

14 Q. And are you aware of the fact that there were specific
15 indications relating to this drug and who it could be
16 prescribed to in the HIV patient spectrum?

17 A. Yes.

18 Q. All right.

19 What's your understanding of the latter, who this drug
20 could be prescribed to on the label?

21 A. It's after the failure of two virologic agents, and it is
22 a very narrow band of patients. These are patients who are --
23 have had the disease for a while, and they're -- they're not
24 responding. They're getting to a point where, as a physician,
25 you're looking for some type of alternative to mediate the

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1 course of this -- this illness.

2 Q. Sir, if we take a look at the off-label methods of
3 delivering a promotional message. You've listed here for us
4 detailing.

5 Is that the same thing as a sales rep making a sales
6 call to a doctor?

7 A. Yes, it is, although, I've created the term because it's
8 so much more. It's a constructive discussion, but, yes,
9 that's one way of getting information to a physician.

10 Q. And in fairness, it's not just a sales call like you
11 might have for a shoe salesman. These detailing visits are
12 from experienced sales representatives having a lengthy
13 discussion with a doctor?

14 A. It's a lengthy, substantive discussion about the product.
15 You understand, and you want to relay that information.
16 Sometimes the conceptualization is I'm going to go in and drop
17 a few samples and say hello, and it's extraordinarily
18 different, especially today, with the challenge of getting in
19 to see a physician, so it has to be a substantive one when you
20 get it.

21 Q. And what about the use of off-label studies to promote a
22 drug?

23 For the -- just for the record, sir, off-label
24 detailing messages delivered on a sales call, off-label
25 studies, false or misleading marketing materials, the use of

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1 -- improper use of MIR forms, off-label messages delivered at
2 promotional speaker programs, is that something that based on
3 your experience would be considered lawful or unlawful?

4 A. Unlawful, shouldn't be doing it, should be in concert
5 with the label.

6 Q. And can you describe for us how off-label studies might
7 be used to promote the off-label sales of a drug like Prezista
8 and Intelence?

9 A. Well, if I have information about a pharmaceutical and it
10 suggests that I'm able to use the drug beyond the confines of
11 the label and that goes to my potentially prescribing
12 physician, he or she is going to look at that and say, Well,
13 maybe this is appropriate.

14 That's certainly different than if a physician comes to
15 a decision on their own to decide, you know, This is really
16 the only therapeutic alternative I have for the patient.

17 Once I begin suggesting the use, it goes into a
18 different category.

19 Q. What about false or misleading marketing materials that
20 minimize or attempt to eliminate the -- an adverse reaction on
21 the drug's label? How might that affect or impact physicians'
22 prescribing patterns?

23 A. That was very concerning, and as you heard with Dr.
24 Glatt, the idea and the example here was with lipids. You
25 know, the potential concern was if I minimize what that is,

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1 the drug might be prescribed for a patient for whom -- they
2 already have some kind of cardiac -- underlying cardiac
3 condition, could be dangerous.

4 So we wanted someone to understand the full impact of
5 the potential side effects that occur with the drug. And
6 every drug has side effects to some degree. But you have to
7 understand what they are and how they could potentially help a
8 patient.

9 Q. Can adverse reactions that are listed on a drug's label
10 be an impediment, an obstacle to a pharmaceutical company and
11 its ability to sell to doctors?

12 A. Yes, especially when the -- let's say the competitive
13 products in the same area don't have those limitations.

14 Q. And if there are false or misleading materials designed
15 to minimize those adverse reactions, what might happen?

16 A. Well, worst-case scenario, one could have severe
17 consequences from taking a drug if that potential side effect
18 was understated.

19 Q. And what might happen with respect to a physician's
20 likelihood to prescribe that drug if the adverse reactions or
21 serious adverse reactions are minimized?

22 A. You won't be getting another visit pretty much. It's
23 a -- you know, this discussion, too, this is a bond of
24 credibility.

25 When you're working as a sales representative, it's --

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1 I don't want to just see you one time. I want to be able to
2 have a continuous relationship over time.

3 So if I basically tell you to do something that could
4 endanger your patient, you're not going to be really happy
5 with me. You want to have a forthright and constructive
6 discussion about what the product can do.

7 And then there's -- there's also a safety valve. If it
8 gets beyond the scope of the label, let's say a doctor has a
9 question about the product's capability beyond the label,
10 there is an opportunity for a medical information request
11 where that discussion will be held with another physician or a
12 nurse to talk about it on a scientific basis.

13 Q. And, Professor Sillup, what about the practice of using
14 or soliciting an MIR?

15 THE COURT: Sorry, Mr. Marketos. I don't want to
16 interrupt because this might not be a great stop --

17 MR. MARKETOS: It's fine.

18 THE COURT: Is this a spot that we can stop at before
19 this question?

20 MR. MARKETOS: Yes, Your Honor.

21 THE COURT: All right. Folks, what I'm going to do
22 is I'm going to break the jurors for lunch. I have another
23 matter to attend to. I'm going to run to do that.

24 This lunch may be 45 minutes and not 30 because I'm not
25 so sure I'll be back until 1 o'clock. So let me -- let's do

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1 45 minutes today only because I don't want folks waiting
2 around if I can't get back into the courtroom.

3 So let's dismiss the jurors, and then I'll address
4 counsel separately.

5 THE DEPUTY COURT CLERK: All rise.

6 (Jurors exit courtroom.)

7 THE COURT: Professor Sillup, you can step down as
8 well. You're on break until 1 o'clock.

9 Off the record.

10 (Luncheon recess was taken from 12:15 p.m. to 1:00
11 p.m.)

12 THE DEPUTY COURT CLERK: Please remain seated.

13 THE COURT: Professor, when you're ready, if you
14 don't mind just getting situated.

15 MR. MARKETOS: I am at the conclusion, Your Honor,
16 and I'm going to offer the exhibits. I just want to make sure
17 there's no objection to them before I do that.

18 MS. BROWN: I'm just pulling hard copies, Your Honor,
19 and I'll review them while the testimony is going on and make
20 sure it's okay.

21 THE COURT: All right. Thanks. All right. So
22 you'll let me know.

23 Anything else we need to talk about before we see if
24 the jurors are ready?

25 MR. MARKETOS: No, Your Honor.

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1 THE DEPUTY COURT CLERK: All rise.

2 (Jury enters the courtroom.)

3 THE COURT: All right. Folks, why don't everybody
4 have a seat.

5 Mr. Marketos, when you're ready.

6 And Professor Sillup, just to remind you, you're still
7 under oath from earlier today. All right?

8 THE WITNESS: Yes, Your Honor.

9 THE COURT: You may proceed.

10 MR. MARKETOS: Thank you, Your Honor.

11 BY MR. MARKETOS:

12 Q. Professor Sillup, just briefly, sir, we had talked about
13 a summary of the opinions that you're offering to this jury
14 today. You had mentioned earlier on that one of the things
15 that you've done is you've attended trial throughout the
16 course of the last -- since May the 5th in this case.
17 Actually May the 7th.

18 Correct?

19 A. Yes.

20 Q. And you've been present for the testimony of the
21 witnesses and seen the exhibits.

22 Right, sir?

23 A. Yes.

24 Q. Has your opinion that you're offering today changed at
25 all by virtue of the -- your attendance at trial to hear

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1 witnesses' testimony?

2 A. It's been helpful and reenforcing.

3 Q. Thank you, sir.

4 If we could, let's go back to where we were, which was
5 discussing the manners in which off-label promotion takes
6 place and ask you about specifics of this case.

7 All right, sir?

8 We were talking about MIRs, and I just started talking
9 about that. Did you review information in this case, sir,
10 relating to the manner in which Janssen used medical
11 information requests to disseminate off-label information to
12 doctors?

13 A. Yes, I did.

14 Q. Did you hear testimony from witnesses on this topic and
15 review exhibits that the members of the jury have seen as
16 well?

17 A. Yes.

18 Q. All right.

19 What is it about the solicitation of medical
20 information requests from doctors that allows for the
21 off-label promotion of products like Prezista and Intelence?

22 A. Well, this is a vehicle. An MIR is a request by a
23 physician, a medical professional, about more in-depth
24 information beyond the scope of the approved label.

25 What concerned me as I reviewed the information for

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1 this case is the sheer number of MIRs in the -- I would say
2 the manner in which they were solicited. I'm surprised from a
3 career and looking of over a number of products of past years,
4 you do get MIRs, yes, but nowhere near the number that I saw
5 in this situation.

6 Q. And two things, sir. Were you present for the testimony
7 of Mr. Mattes when he testified about Janssen's tracking of
8 the volume of MIRs, just the volume?

9 A. Yes.

10 Q. All right.

11 And were you present for Mr. Mattes's testimony about
12 the use of MIRs as a manner in which to measure the
13 performance of the sales force?

14 MS. BROWN: Your Honor, I object. That misstates his
15 testimony.

16 THE COURT: Sometimes I've got to look.

17 I'll sustain the objection. You've got to rephrase the
18 question.

19 MS. BROWN: Thank you, Your Honor.

20 BY MR. MARKETOS:

21 Q. Were you present for Mr. Mattes's testimony about the use
22 of MIRs being something that Janssen evaluated with respect to
23 its sales force?

24 A. Yes.

25 Q. All right.

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1 And what's concerning about that practice to you, sir?

2 A. Well, I saw two things. It was -- I looked at it as an
3 invitation for off-label marketing, and it was also a metric
4 for -- it was being used as a metric for someone's
5 performance.

6 Q. And -- but I'm -- so -- sorry, sir, but so what?

7 A. So more MIRs, I'm doing a better job. If I'm not getting
8 the required number -- first of all, I've never seen a
9 requirement to generate MIRs. They occur, and you would
10 expect that in certain disease entities, cancer, for example.
11 There are questions about off-label use.

12 But to have that used as a vehicle for discussion or a
13 performance measure is outside the box for me.

14 Q. What about with respect to the Promotional Speaker
15 Bureau? Did you review testimony and information relating to
16 how those bureaus were used to disseminate off-label
17 information about Prezista and Intelence?

18 A. Yes.

19 Q. All right.

20 And what did you learn from the witnesses in the case
21 and the testimony at trial?

22 A. Again, concerning. A speaker program should be imparting
23 knowledge and information about a product and not -- one of
24 the reasons to participate should be a quest for that
25 knowledge or understanding, to learn more about how this drug

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1 could help the patient as opposed to how many prescriptions
2 are you writing and is this a vehicle for discussion about
3 off-label uses.

4 Q. All right, sir.

5 When you talk about -- let me just ask you.

6 Professor Sillup, if a company were to -- a
7 pharmaceutical company wanted to capture off-label sales, can
8 you think of any other ways, other than the manner in which
9 Janssen allegedly did so in this case, that it would do --
10 that it would accomplish that task?

11 A. Well, you could take a normal breakdown of sales. You
12 know, if you're selling on-label, you're going to have some
13 off-label use. Physicians, as you know, can prescribe
14 off-label. So there's going to be that small percentage, and
15 you could do those as a breakout as opposed to a specific
16 measure.

17 Q. And in this case, Professor, is it your opinion that
18 Janssen used a number of methods in order to disseminate and
19 promote their drugs off-label?

20 A. Yes.

21 Q. Was that limited to a certain portion of the country?
22 Was it nationwide?

23 Describe your understanding.

24 A. My sense, it was across the nation, of maybe greater
25 concentration in those areas where there were higher HIV

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1 populations, New York, Florida.

2 Q. All right, sir.

3 And let's take the time to look at the actual specific
4 claims with respect to Prezista and Intelence being marketed
5 off-label.

6 All right, sir?

7 There's the Prezista lipid messaging issue, which
8 spanned for eight-plus years. You understand that that
9 relates to the manner in which the sales force was requested
10 to message or describe the lipid issues with Prezista.

11 Right, sir?

12 A. Yes.

13 Q. And with respect to Prezista treatment-naive, you -- what
14 do you understand that to be addressing?

15 A. This -- treatment-naive patients were beyond the scope of
16 the label approval. Naive means you haven't been treated
17 previously, and the patients who were within the scope of the
18 label were patients -- basically a small percentage of
19 patients who have had treatment failure.

20 Q. And did you understand that the drug Prezista was not
21 permitted on-label, by its label, to be prescribed in
22 treatment-naive patients during the time period from 2006 to
23 2008?

24 A. Yes.

25 Q. Let me be specific.

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1 It was not Janssen's -- Janssen was not permitted to
2 promote the sale of its drug for patients in the naive segment
3 of the population.

4 Correct?

5 A. Yes.

6 Q. For that period of time?

7 A. Yes, that's how I understand it.

8 Q. And with respect to Intelence treatment naive, for the
9 entire duration, 2006 to 2014, is it your understanding that
10 Intelence never had a label that permitted Janssen to promote
11 that drug for naive patients?

12 A. That's my understanding.

13 Q. And how about with respect to this once-daily dosing
14 issue? Is it your understanding that Intelence never had an
15 on-label use permitting Janssen to promote that drug for
16 once-a-day dosage?

17 A. That's correct.

18 Q. Did you have an opportunity to review strategy documents
19 like those that were discussed with Mr. Mattes and other
20 witnesses where Janssen was putting together its plan to go to
21 market?

22 A. Yes.

23 Q. What did you first note about that strategy as it relates
24 to the patient segmentation that Prezista was on-label for?

25 A. The strategy was casting a wider net for more patients

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1 than those identified in the label.

2 Q. And, Professor Sillup, we've seen documents in this case,
3 and we may refer to them briefly, where the segment H on-label
4 patient population has varied in certain documents between
5 7,000 and 19,000 or 20,000 patients in total.

6 Have you seen those documents?

7 A. Yes.

8 Q. And yet, what was your understanding was the initial
9 forecast for half of the year 2006? Do you recall the volume
10 number being \$45 million?

11 A. Yes. And the number of patients was concerning to me
12 because you're going into a market where there are other
13 product alternatives. You're positioning yourself.

14 It was also stated that there is, we'll call it, time
15 to transfer to treatment. Even though you want to switch me
16 from a drug to one of these, it's going to be some time. So
17 it's not instant.

18 So with this relatively small segment of patients, I
19 think it would be really challenging to make numbers at that
20 level.

21 Q. And if Janssen was able to actually overcome and get
22 every patient in that segment to switch from the drugs that
23 they were already on, it captured the entire on-label segment
24 H portion of the market, is it your opinion they would have
25 made forecast anyway?

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1 A. I don't believe they would have made it, and you're never
2 going to get all the patients. I've been doing this for a
3 long time, and it's just -- there are reasons that you don't.
4 Maybe there are different combinations that work better. And
5 you're dealing with a disease entity where you're going to
6 have to do some mix and match. Especially for patients who
7 are this far advanced in their disease.

8 Q. We looked at a document, and it was actually asked of
9 Mr. Mattes himself, a document that shows Janssen's strategy
10 at least in 2006 through 2009. For the time being, I'm
11 focused on that portion of the strategy.

12 Do you see that, sir?

13 A. Yes, I do.

14 Q. During the time period, from 2006, 2007, 2008, before
15 Prezista's label changed in October of 2008, were patient
16 segments in E and F on-label or off-label?

17 A. It was off-label. You were within segment H. The
18 terminology, the natural playfield, is basically within the
19 confines of the label. Spillover, maybe you're going to get
20 some physician decision for -- of one of off-label use, but
21 going after these segments, which are much larger, 37,000
22 patients, puts you into clear off-label territory.

23 Q. And why, Professor Sillup -- do you have an opinion as to
24 why Janssen had to target patients in segments outside of the
25 label?

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1 A. Well, it comes back to your forecast. You know, as we
2 said earlier, forecast is the financial measurement of your
3 strategy or your plan. The plan was to capture more patients
4 than were in the label.

5 Q. And you mentioned natural -- excuse me, segment H being
6 the natural playfield. If we take a look at the assessment of
7 the growth targets that Janssen was looking at in 2007, do you
8 recall this exhibit being discussed at trial with Mr. Mattes
9 and others?

10 A. Yes, I do.

11 Q. "To achieve our 2007 target, we need to believe that" --
12 and then there's a total addressable market that Janssen was
13 addressing in this document.

14 Do you recall that?

15 A. Yes.

16 Q. And to be clear, sir, there's a reference at the bottom.
17 "To achieve our 2007 targets, we need to believe that -- we
18 need to capture between 30 and 80 percent of our addressable
19 market."

20 Do you see that?

21 A. Yes.

22 Q. Now, there was a conservative estimate of 20 -- 20,000 on
23 the left-hand side.

24 Do you see that?

25 A. Right. Which is your approved label.

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1 Q. Okay.

2 So the 20 is the approved level, that's segment H
3 natural playfield.

4 And then there's a max addressable market that includes
5 more patients than other segments.

6 Do you see that?

7 A. Yes, I do.

8 Q. Can you tell the members of the jury what it appears that
9 Janssen's plan was at this point in time?

10 A. Well, it appears as though they're crafting a strategy to
11 go after those additional segments beyond the approved label.

12 Q. And, sir, I discussed this just about an hour or so ago
13 with Mr. Mattes, maybe two hours ago with Mr. Mattes. What
14 metric had Janssen actually calculated as it relates to the
15 value and dollars to Janssen of a single prescription of this
16 drug?

17 A. A very -- a lifetime value of a patient or a patient's
18 life on the drug.

19 Q. Have you seen this metric described in this manner
20 before, sir?

21 A. No, I have not.

22 Q. At the end of the day, is it clear to you, sir, that
23 Janssen was calculating on a patient-by-patient basis how much
24 each prescription was worth at Janssen for Prezista?

25 A. It appears to be that way.

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1 Q. Now, there were sales goals that were pushed down as a
2 result of the forecast. Can you explain for us how is it that
3 a forecast for an entire organization turns into sales goals
4 for districts like New York, as an example?

5 A. Well, you take your forecast, that top line number, and
6 let's say for easy math you have ten districts. So if your
7 forecast is a million, every district has a hundred thousand
8 forecasts. And then within that district, if you have ten
9 representatives, each representative would have one-tenth.
10 And it might be a weighted average because one representative
11 is in a more densely populated area than another. But that
12 becomes the individual goal or quota for a sales
13 representative.

14 Q. And, sir, if off-label sales are actually factored into a
15 top-level forecast for the entire organization, what happens
16 when that forecast turns into sales goals for representatives
17 like Ms. Brancaccio and Ms. Penelow?

18 A. Well, it's going to put on a measure of pressure
19 throughout the organization, particularly -- and generally
20 forecasts I like to see built from the bottom up. How many
21 patients are available? What's the treatment? How many could
22 this district do? And then roll that up to construct your
23 forecast rather than say, here's a number and devolve it down.
24 But for the representative who is getting this quota,
25 it's a considerable amount of pressure, particularly if it's

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1 associated with marketing tactics that are off-label.

2 Q. And did you note in the evidence that you reviewed, sir,
3 that Janssen recognized that the label that it obtained would
4 not allow it to achieve forecast?

5 A. It certainly seemed that way. Unless they were to take
6 some action beyond the label.

7 Q. If we take a look here at this document, it says,
8 "However, penetrating segments H and G alone will not give us
9 enough swing to reach our growth targets."

10 Do you see that?

11 A. Yes, I do.

12 Q. All right.

13 And at the end of the day, what was that communicating
14 to you?

15 A. Pressure to make possibly an unrealistic number. One
16 would have to ask is, what's the growth target? How did you
17 determine what that top number is?

18 And then back and say, what's achievable? And what
19 makes medical sense as well? You know, we talk about being
20 able to maintain a constructive and long-term partnership with
21 prescribing physicians. I want to be able to come back and
22 see you. I don't want you to feel that you're under duress to
23 prescribe my drug.

24 Q. And, Professor Sillup, you know, at the end of the day,
25 there was a point we heard about a big meeting in July of

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1 2006, shortly after Prezista's launch.

2 Were you present for that testimony from a number of
3 witnesses?

4 A. Yes, I was.

5 Q. And do you recall -- I'll just put it plainly, sir.

6 Do you recall that Janssen essentially whiffed on that
7 forecast?

8 A. It's a big miss. You know, if you are projecting 3,700
9 and you come in just shy of 900, that's significant. You've
10 got to go back and ask yourself why. And perhaps it was time
11 to transition for patients, but it might also suggest that you
12 are -- there just aren't that many patients, and there are
13 competitive products available.

14 Q. And, Professor Sillup, if a company like Janssen launches
15 a product and they're at 25 percent of their forecasted sales,
16 what might it suggest is part of the problem?

17 A. An overzealous forecast.

18 Q. Sir, some might say, well, the sales force is just not
19 doing its job.

20 Is that another possibility?

21 A. It is. It is a possibility.

22 Q. All right.

23 In this case, did you -- when that fork in the road was
24 reached, in your opinion, what would Mr. Mattes and senior
25 leadership at Janssen, what ought they have to have done?

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1 A. Well, you've got a choice. You can go back and say, we
2 need to revisit the forecast, and perhaps consider more
3 careful alignment with the improved label. Or we may craft
4 strategies that are off-label to enable us to sell to patients
5 outside the label.

6 Q. And, you know, if you take the left fork and you decide
7 that you need to adjust your forecast, what might the
8 implications be for the executives?

9 A. I'm sorry. Would you please repeat that?

10 Q. I'll see if I can. I doubt I can.

11 What might the -- what problems might that present for
12 an executive like Mr. Mattes if he had completely messed up
13 the forecast?

14 A. Significant. If you develop a forecast -- and once I'm
15 the head guy and the forecast -- everything that comes
16 through, particularly on forecasted budget, is going to go
17 through the office of the president. So we've convinced you
18 that these are the numbers. And if after the first month
19 we're -- we've missed it so significantly, you've got to step
20 back and say, do we go back and revisit and maybe generate a
21 more realistic number based on the label, or do we begin a --
22 what we should -- ought to do is that, as opposed to do we
23 look at strategies beyond the label.

24 Q. And what problems might it present to a senior executive
25 of a company with respect to who he reports to if he's missed

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1 on his forecast strategy?

2 A. Oh, his credibility. You know, if it's, I'm the head guy
3 and I missed it significantly and I come back now and tell you
4 this, you might have someone else in my chair in six months.

5 So it's a significant decision. But before that
6 forecast leaves, because it not only dictates what type of
7 selling you're going to do, it also dictates what kind of
8 spending, what kind of budget you're going to get to support a
9 product launch.

10 Q. Sir, if we take a look at the longer term view of the
11 market penetration strategy for Prezista, at least as was
12 described in this document, there was a reference earlier to
13 counsel for Mr. Mattes, or counsel for Janssen, to priority
14 upon full approval; that this was only a strategy that Janssen
15 was taking in anticipation of getting full label approval.

16 Do you recall hearing that testimony?

17 A. Yes, I do.

18 Q. All right.

19 And is that an accurate -- in your view, having
20 reviewed the documents, is that an accurate representation of
21 what Janssen was actually doing in 2006 and 2007?

22 A. I don't believe so. I believe that they were clearly
23 looking to market to segments beyond the scope of the approved
24 label.

25 Q. Now, there are, we've learned, ways in which companies

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1 like Janssen/Tibotec can send companies and vendors out into
2 the field and learn what doctors are actually hearing from
3 their sales representatives.

4 Do you understand that?

5 A. Yes, I do.

6 Q. Did you review a number of those documents, that type of
7 document, where Janssen was getting feedback from physicians
8 in the field from vendors that it paid to perform service?

9 A. Yes.

10 Q. Did you hear Mr. Mattes testify that it might be a way to
11 find out if there's off-label promotion going on?

12 A. Yes.

13 Q. Did you review some documents that indicated that Janssen
14 was receiving that message back at headquarters?

15 A. Yes. It seemed to be working.

16 Q. And if you take a look at the unaided message recall, for
17 instance, just for Intelence, what would that tell an
18 executive at Janssen about the messages that its sales
19 representatives were delivering to physicians?

20 A. Well, the off-label messaging was working. The program
21 was working. The dosing issue of -- we discussed, you know,
22 once a day being desirable, but marketing a product that is
23 indicated twice a day, once a day is putting you into a
24 different area of off-label.

25 Q. There's a reference here that we saw in trial at

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1 Exhibit 47 where there was actually a manager who responded to
2 discussions about training and providing the sales force with
3 off-label studies.

4 Do you recall reviewing that information as you
5 performed your job?

6 A. Yes.

7 Q. And there was actually a comment by Mr. Martin. "If we
8 continue to review off-label information with the field, it
9 gives the impression of a training session."

10 Did you see?

11 A. I did. I was a field sales trainer, and sometimes very
12 effective training occurs in the field. So it is a training
13 session.

14 So if we talk about that and then you immediately get
15 to use that information, prior to making a call, we discuss
16 it, then you go use it, it's very reinforcing.

17 So it is a type of training.

18 Q. Did you review other types of documents, like A&U
19 reports, that showed doctors responding to questions about
20 what they thought to be important as it relates to Prezista
21 and Intelence?

22 A. Yes.

23 Q. And is it your understanding that Janssen performed its
24 studies about what doctors were saying about what was
25 important to them in prescribing those two drugs?

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1 A. Yes. Yes.

2 Q. And what was your understanding of one of the main
3 messages that doctors were saying about Prezista?

4 A. They liked the concept of a product being "lipid
5 neutral," the term that was being used. Or not creating a
6 harmful lipid situation.

7 Q. And did you review documents relating to, similar to, or
8 like Reyataz?

9 A. Yes.

10 Q. How about with respect to Intelence? What did -- were
11 doctors informing Janssen was important to them in terms of
12 prescribing that medication?

13 A. Dosing. Dosing was important. Once a day versus the
14 twice a day for Intelence.

15 Q. And what's the problem with that in terms of a
16 competitive barrier or a barrier to sales?

17 A. Well, it's off-label. It's misleading. And it may --
18 you don't have information to suggest that it actually works.
19 You know, dissolving a drug that is there, and I -- I don't
20 know if I'm going to achieve -- they call it the
21 pharmacokinetic peak -- the same way if I take the drug once a
22 day when I'm supposed to be taking it twice a day.

23 That's what was tested. Those are the data that you
24 have available.

25 Q. How about with respect -- you heard me discuss with

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1 Mr. Mattes Janssen's calculation of the return on investment
2 that it was obtaining from the Promotional Speakers' Bureau.

3 First of all, you understand there was a Promotional
4 Speaker Bureau for Prezista and then another Promotional
5 Speaker Bureau for Intelence?

6 A. Yes.

7 Q. And what did you learn about the conclusions that Janssen
8 reached when they were analyzing the return on the investment
9 of the money they spent on those programs?

10 A. I think it was 3 to 1. You know, for every dollar they
11 invested in the speaker program, they would harvest \$3. Not a
12 bad rate of return, right?

13 Q. And if we look at the key conclusions here, "The speaker
14 programs produced 40.3 percent more Intelence prescriptions
15 when compared to the controlled doctors."

16 Do you see that?

17 A. Yes.

18 Q. Just describe for us what you understand a control group
19 to be versus the group that Janssen was measuring in this
20 metric?

21 A. Well, in this case, a control is physicians who did not
22 participate in the speaker programs compared to those
23 physicians who did. And there's a significant difference.

24 Q. And what would results like this, sir, say to you about
25 whether or not Janssen's Promotional Speaker Bureau program

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1 worked?

2 A. I think it's quite compelling. It says it worked, and it
3 worked well.

4 Q. Now, did you review documents where Janssen had
5 performed -- had -- and had its own vendors perform analyses
6 of the impact that the programs had on speakers' long-term
7 prescribing habits?

8 A. Yes.

9 Q. All right.

10 Now, before we get to that, sir, did you review this
11 document that said, "Interestingly, Intelence speaker programs
12 also had an impact on Prezista prescription lift."

13 Do you see that?

14 A. Yes.

15 Q. What is brand loyalty as an -- in this field?

16 A. Well, you use one product from a company and like it and
17 then you might use something else by the same manufacturer.

18 This was -- I was surprised to see how much of a lift
19 this made. I know that there's some association, but this was
20 a significant lift.

21 Q. Was Janssen's marketing through the Promotional Speaker
22 Bureau program working?

23 A. I'd say working very well.

24 Q. We talk about this document, and I don't want to belabor
25 this point, sir. There was a reference to Janssen using and

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1 actually having its managers use the MIR forms as a metric and
2 using it to drive the sales force to go out and solicit them.

3 Do you recall that discussion during the course of this
4 case?

5 A. I do. And I --

6 Q. What is the problem with that?

7 A. You're using something that is supposed to be truly based
8 on an unsolicited request. You're now -- you've now turned
9 that into a metric. And I've not seen this treatment before
10 of a medical information request form.

11 Q. If we take a look, sir, at this next document, there's a
12 discussion about whether, "Do you or does someone on your team
13 have the percentage of spontaneous off-label sales for
14 Prezista and Intelence?"

15 Do you see that?

16 A. Yes, I do.

17 Q. All right.

18 How does one -- let me ask this, Professor Sillup. How
19 does one track off-label sales and characterize them as
20 spontaneous?

21 A. First of all, the term "spontaneous" sort of bothers me.
22 I think the decision by a physician is very thoughtful. It's
23 very much in consideration of the patient. This doesn't just
24 happen. He or she makes a very significant discernment for
25 the patient.

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1 Tracking those decisions -- and that decision may be to
2 use the product off-label because it's one of my last
3 therapeutic alternatives for the patient. I get concerned
4 when I see this being used as a measure now because am I truly
5 getting information requests, or have I turned the system into
6 a metric to monitor sales.

7 Q. This was another exhibit that we looked at during trial,
8 Professor Sillup. This was a PATH report, a tactical report
9 from manager Tony Dolisi in the New York area in that region.

10 Do you recall this?

11 A. Yes, I do.

12 Q. And this was, "MIR forms are being widely used to get the
13 48-week data into the hands of all customers."

14 Professor Sillup, is this essentially giving away the
15 game?

16 A. So, yes. So you've taken the tool that -- to be geared
17 toward unsolicited requests to use a product and want to talk
18 to the medical professional and instead, you're now finding
19 that additional data that would enhance the profile of the
20 drug is being disseminated through this vehicle.

21 Q. And what type of promotion would that constitute?

22 A. It's -- it's clearly off-label promotion, but it almost
23 goes beyond that because this -- the MIR is something that's
24 held sacred, and there's, as we've heard, there's a, we'll
25 call it, a wall between the on-label promotion that a sales

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1 representative can do and the off-label discussion that's
2 handled, often, a different individual. A scientific liaison
3 a physician or nurse practitioner can have that discussion.

4 Q. What was actually happening here? Was that wall staying
5 up, or was it being breached?

6 A. The wall -- I don't think there was a wall. But to hear
7 something like this, I have not seen something as -- I could
8 use the term maybe "bold" as this being done.

9 Q. Well, and that's another question I have for you, sir.
10 Were you present when we saw some training materials where
11 Janssen employees were taught how to be careful with their
12 communications?

13 A. Yes.

14 Q. And does this appear to be careful?

15 A. This appears to be a faux pas, something that even
16 though, you know, things were discussed but nothing was put in
17 writing, this -- this is something that if it was happening,
18 and it appears to have been, shouldn't have been in writing.

19 Q. And, sir, what does it say to you about the fact that a
20 manager like Mr. Dolisi was comfortable putting something like
21 this in a written document and distributing in a report?

22 A. He is -- he drunk the Kool-Aid. He's behind the -- one
23 of the provocateurs of an on-label -- off-label marketing
24 strategy.

25 Q. And if an entity like Janssen were concerned about

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1 off-label marketing and reports like this were being
2 circulated within the company, what would you expect to happen
3 to somebody like Mr. Dolisi?

4 A. I'm thinking like this, and I'm used to -- there is a
5 periodic monitoring by compliance, someone looking at the type
6 of information that is being used or disseminated.

7 Now, it occasionally -- you get that, you know. I
8 might find -- I work with companies that might have a -- I'll
9 call it rogue salesperson who is doing something, but that's a
10 one-off situation.

11 In this case, it seemed to be rather across the board.

12 Q. And if we take a look at Janssen's assessment, did
13 Janssen pay vendors to determine the effect that their
14 promotional activities had on physicians' prescribing
15 behavior?

16 A. Yes.

17 Q. And what was their conclusion?

18 A. It was -- it was -- they were working.

19 Q. And they were working, sir -- it says here, "Speaker
20 programs are an effective way to make a lasting impact on
21 prescribing behavior."

22 First of all, do you agree with Janssen as it relates
23 to this conclusion in their own documents?

24 A. I agree with it. I don't agree with the method, but I
25 agree that programs do work very well, and one of the reasons

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1 speaker programs are so effective is you have knowledge
2 imparted by a physician to his or her colleagues.

3 I can come as a representative, but that doesn't have
4 the same lasting impact.

5 Q. And what might the impact be of paid speakers delivering
6 messages on-label and off-label to a room full of -- or a
7 restaurant full of physicians?

8 A. Well, this is a concern. It's one thing to have --
9 impart knowledge and talk about on-label strategy. It's
10 another -- marketing also works for off-label strategy.

11 So this is just another way to extend beyond the
12 labeled indication.

13 Q. Did you hear testimony from certain witnesses in this
14 case about the use of plants in the audience at these speaker
15 programs?

16 A. I did.

17 Q. Have you ever been involved with a company who used
18 plants to disseminate off-label information at something like
19 a speaker bureau?

20 A. Through consulting and stuff I have seen -- I have seen
21 that, yes.

22 Q. You've seen that tactic used before?

23 A. Yes.

24 Q. All right.

25 What is your understanding of the likely effect of that

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1 type of tactic in Janssen's promotional speaker programs?

2 A. It's something that works, particularly if that approach
3 is going to get the audience -- physician audience, the
4 prescribers, to begin thinking about possible use of the
5 product in an off-label manner.

6 Q. Now, sir, Janssen in this document, RX 657, is examining
7 the prescription lift per participant and the total
8 prescription lift.

9 Do you see that?

10 A. Yes. Yes.

11 Q. And for this one period of time, Janssen calculated that
12 their total lift net rate sales in dollars were 4.3 million.

13 Do you see that?

14 A. Yes, I do.

15 Q. And at the bottom there, there's an ROI calculation of
16 \$3.15.

17 Explain to the members of the jury what that means
18 about the return on investment that Janssen was getting out of
19 these paid speaker programs?

20 A. So this is what I mentioned earlier. For every dollar
21 you invest, I'm gaining three. So speaker programs were being
22 used beyond the normal approach of imparting knowledge as a
23 marketing tool.

24 Q. Sir, what -- just -- without going into the details of
25 any other matter, what do you understand that Johnson &

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1 Johnson taught its employees about what might happen to
2 entities that engage in off-label marketing?

3 A. Well, there could be some significant legal consequences
4 and fines.

5 Q. And let me ask you this, sir: Did you also take a look
6 at some of the results from studies that were done in the
7 field about whether or not Janssen's message was having an
8 impact on prescribers?

9 A. Yes.

10 Q. And were these studies that Janssen itself commissioned?

11 A. Yes.

12 Q. And what was the result that was communicated back to
13 Janssen about whether or not their marketing messages were
14 having an impact out in the field?

15 A. Seemed to be working.

16 JUROR: Excuse me. I'm sorry to disturb you, sir.
17 Could I use the restroom?

18 THE COURT: Folks, let's take a ten-minute recess.

19 THE DEPUTY COURT CLERK: All rise.

20 THE COURT: Have a recess. We're in recess for ten
21 minutes.

22 You may step out as well.

23 (A short recess occurred.)

24 THE DEPUTY COURT CLERK: Please remain seated.

25 THE COURT: Folks, we're going to take another break

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1 between 3:00 and 3:30, just -- with the jurors' communications
2 and because it's a long afternoon, I think I'll probably give
3 a second break, and I always forget.

4 Megan is typing away for hours at a time, so she's
5 probably spending more energy than all of us combined, so
6 we'll take another one, just so you all know.

7 THE DEPUTY COURT CLERK: All rise.

8 (The jury enters the courtroom.)

9 THE COURT: All right, folks. Everybody have a seat.
10 We will continue with the examination.

11 And, by the way, folks, we're going to take another
12 short break somewhere probably between 3:00 and 3:30. With
13 the long afternoon, I think it's hard to assess whether anyone
14 in the courtroom is going to need another break.

15 So we're just going to do another short one later in
16 the afternoon. I think that's fair considering how long the
17 stretches are until 5:00 p.m.

18 So with that, Mr. Marketos, you may continue.

19 MR. MARKETOS: Thank you, Your Honor.

20 BY MR. MARKETOS:

21 Q. Professor Sillup, don't worry. I'm not going to retread
22 treadable steps. I just wanted to touch on something that I
23 had forgotten to ask you about. Forgive me.

24 We were looking at one of the original strategy
25 documents that Janssen has provided in this case, and the

SILLUP - DIRECT - MARKETOS

1 longer term view of the market penetration strategy
2 specifically.

3 This is one of the documents you reviewed for your
4 report in this case.

5 Do you recall that?

6 A. Yes, I do.

7 Q. And there was a reference in the middle, "The benchmark
8 is Reyataz and less Kaletra. Need to prove favorable
9 differentiation, primarily on lipids and then GI profile."

10 Do you see that?

11 A. Yes.

12 Q. Do you see the studies -- the numbered studies that are
13 listed next to the lipids issue?

14 A. Yes.

15 Q. Did you review C159 and determine it was an off-label
16 study?

17 A. Yes. Made known by a different name other than that
18 number, but I did look at several studies.

19 Q. And did you look at the DART study in this case?

20 A. Yes.

21 Q. All right.

22 MR. MARKETOS: Let's take a look at -- and let's skip
23 back in time, forward, fortunately, to slide 35, please.

24 Thank you, Ms. Johnson.

25 BY MR. MARKETOS:

SILLUP - DIRECT - MARKETOS

1 Q. We were looking at the results of what was called a
2 PhysPulse study, a study of physicians and messages that they
3 were receiving.

4 Did you learn that the goal of these studies were to
5 clarify the effectiveness of the promotional efforts that
6 Janssen was engaging in?

7 A. Yes.

8 Q. And actually refer to them as selling messages.

9 Right, sir?

10 A. Yes.

11 Q. And they wanted to leverage the above information to make
12 timely and impactful adjustments to marketing tactics for
13 Prezista and Intelence.

14 Do you see that?

15 A. Yes, I do.

16 Q. And did you learn what physicians were saying was one of
17 the key drivers for Prezista out in the marketplace?

18 A. Yes.

19 Q. And what was that as it relates to --

20 A. The one that's highlighted there, the lipid neutral.

21 Q. Is it your understanding, sir, based on the evidence
22 you've reviewed and the testimony that you've heard in this
23 courtroom, that Prezista was ever a lipid-neutral drug?

24 A. No, it was not.

25 MR. MARKETOS: If we take a look at the next slide,

SILLUP - DIRECT - MARKETOS

1 there's a reference here to -- we'll blow it up.

2 BY MR. MARKETOS:

3 Q. There's a reference here to "specific Intelence patient
4 profiles discussed in a naive patient segment of 13 percent."

5 Do you see that?

6 A. Yes.

7 Q. And it says at the top, "11 percent of physicians were
8 exposed to Intelence patient profiles during their last
9 detail. These physicians are higher users and spend more time
10 discussing Intelence with reps."

11 Do you see that?

12 A. Yes.

13 Q. What did you learn about the messages that Janssen's
14 representatives were delivering as it relates to Intelence?

15 A. They were -- they were working.

16 Q. And was it working specifically with respect to the use
17 of Intelence in naive patients?

18 A. It appeared as though it was working beyond that.

19 Q. And were -- was Intelence ever on-label for naive
20 patients for the duration of that medicine?

21 A. Not to my knowledge.

22 Q. If we take a look at the next slide, there's medication
23 adherence and dosing convenience. These are key drivers for
24 early prescription experienced market versus Intelence.

25 Do you see that, sir?

SILLUP - DIRECT - MARKETOS

1 A. Yes, I do.

2 Q. And what was, for Intelence, the number one driving
3 factor for physicians' prescribing behavior as it was
4 communicated to Janssen in these documents?

5 A. Once-daily dosing.

6 Q. Sir, we looked at this exhibit during the course of this
7 trial. There was a communication. It ended up going up to
8 Mr. Mike Iacobellis. And this was from Thomas Turner, who was
9 a sales manager.

10 He stated, "When we professionally challenge providers
11 during AHM programs," those are speaker programs, right, "and
12 on sales calls, we change prescribing behavior."

13 Do you see that?

14 A. Yes, I do.

15 Q. Do you agree?

16 A. Yes. That's why they do it.

17 Q. Professor Sillup, you testified about your personal
18 experience working in the industry, even for Johnson &
19 Johnson, for a number of years.

20 Do you recall that?

21 A. Yes.

22 Q. You worked for Johnson & Johnson out in the field?

23 A. Yes, I did.

24 Q. Did you work for Johnson & Johnson in its headquarters in
25 New Jersey?

SILLUP - DIRECT - MARKETOS

1 A. Yes, I did.

2 Q. All right.

3 What -- just remind us again what the credo meant to
4 you?

5 A. It was the guiding document for the way you conduct
6 business.

7 Q. Do you still have one?

8 A. I still keep a copy.

9 Q. Sir, what -- based on what you saw in this case and what
10 you've seen from the evidence, what was the problem here with
11 respect to this specific division of Johnson & Johnson?

12 A. What concerned me -- I always think of the stakeholders
13 in health care delivery: patients, providers, doctors,
14 nurses. It seemed to me to have -- the triangle was inverted.

15 There was an emphasis on profit, which, again, is not a
16 bad thing, but it shouldn't be pursued and have the other
17 areas de-emphasized, such as creating what I've perceived was
18 a -- I'll call it a challenging environment for those working
19 at Janssen/Tibotec at that time.

20 Q. All right, sir.

21 At the conclusion of your testimony, Professor Sillup,
22 can you please state the final opinions that you reached in
23 this case for the jury once again?

24 A. Yes. Janssen's off-label marketing caused physicians to
25 prescribe -- bless you -- Prezista, Intelence off-label.

SILLUP - DIRECT - MARKETOS

1 Janssen's specific off-label messages caused physicians
2 to prescribe off-label for those specific reasons.

3 And Janssen's off-label messaging directed at
4 physicians had a lasting impact on physicians' prescribing
5 behavior.

6 Q. Based on your education, your training, your experience
7 in the industry, sir, are you offering these opinions to the
8 members of the jury with a reasonable degree of certainty?

9 A. Yes, I am.

10 Q. Has that certainty changed at all as a result of your
11 attendance and the trial testimony throughout the trial of
12 this case?

13 A. No. It's been reaffirmed.

14 Q. All right, sir.

15 I'm going to maybe save you some time here in a few
16 moments. You're being offered to the members of the jury on
17 matters specific to your areas of expertise.

18 True?

19 A. Yes.

20 Q. You are not being offered as an expert to talk about
21 reimbursement.

22 True?

23 A. True.

24 Q. You're not being offered as a medical expert, like
25 Dr. Glatt.

SILLUP - DIRECT - MARKETOS

1 True?

2 A. True.

3 Q. You're being offered for the opinions that you just
4 provided to the jury and nothing else.

5 Is that fair?

6 A. That's correct.

7 Q. During the course of your investigation of this case,
8 have you had access to information that you wanted --

9 A. Yes.

10 Q. -- in order to form your opinions?

11 A. Yes, I did.

12 Q. And, sir, has attending this trial provided you access
13 beyond even what you had when you rendered your opinion
14 initially in this case?

15 A. Yes, it did.

16 Q. All right.

17 And has it confirmed your opinions that you just gave
18 to this jury?

19 A. Yes.

20 Q. Professor Sillup, thank you, sir.

21 MR. MARKETOS: Nothing further, Your Honor.

22 THE COURT: I just have a quick issue. Can I just
23 see counsel at sidebar just for a moment.

24 (Sidebar begins at 2:06 p.m.)

25 THE COURT: I want to be clear because I can't

SILLUP - DIRECT - MARKETOS

1 remember anywhere in the examination. Does it ever come out
2 that he's testifying as an expert witness in the area of
3 blank?

4 MR. MARKETOS: Yes.

5 THE COURT: That did come out?

6 MR. MARKETOS: Right at the beginning.

7 THE COURT: What was the area?

8 MR. MARKETOS: Pharmaceutical marketing.

9 THE COURT: Okay. Got it. I just want to make sure
10 because you normally -- you say it, and, I mean, there's no
11 objection because I already dealt with the motions in limine,
12 but somewhere in there, it's been identified that he's an
13 expert in a particular area. Correct?

14 MR. MARKETOS: Yes, Your Honor. He is offering his
15 opinions in pharmaceutical marketing. You want me -- you want
16 me to --

17 THE COURT: No, no, as long as it's in there. I
18 can't remember it being said. And so I know he's testifying
19 as an expert and these are his opinions, but usually there's,
20 like, some subject area that the expert is qualified. So it's
21 in?

22 MR. MARKETOS: Pharmaceutical marketing.

23 THE COURT: Got it. All right. And there's no
24 objection. I mean, understanding --

25 MS. BROWN: It's already been raised.

SILLUP - CROSS - BROWN

1 THE COURT: Because it's already been raised. Okay.
2 Understood. Yeah.

3 MS. BROWN: Thank you, Your Honor.

4 THE COURT: Okay. I'm good.

5 (Sidebar was concluded at 2:07 p.m.)

6 (Open court.)

7 THE COURT: All right. Thank you, Mr. Marketos.

8 Ms. Brown, whenever you're ready, you may proceed with
9 cross.

10 MS. BROWN: Thank you, Your Honor.

11 May I proceed, Your Honor?

12 THE COURT: You may.

13 (CROSS-EXAMINATION BY MS. BROWN:)

14 Q. All right.

15 Good afternoon, Professor.

16 A. Good afternoon.

17 MS. BROWN: Good afternoon, members of our jury.

18 BY MS. BROWN:

19 Q. Sir, you here in your testimony have made some serious
20 claims against Janssen.

21 Wouldn't you agree?

22 A. Yes.

23 Q. You have accused the folks at Janssen of misleading
24 doctors.

25 Correct?

SILLUP - CROSS - BROWN

1 A. Yes.

2 Q. You have accused the folks at Janssen of bribing doctors.
3 Correct?

4 MR. MARKETOS: Forgive me, Your Honor. That's a
5 legal term. We object. Anti-Kickback Statute, not a bribery
6 statute.

7 THE COURT: I'll sustain it. Rephrase the question,
8 Ms. Brown.

9 BY MS. BROWN:

10 Q. You have accused the folks at Janssen of paying money to
11 speakers to induce them to prescribe more medicine.

12 Fair?

13 A. Yes.

14 Q. All right.

15 And generally you've just accused the folks at Janssen
16 of engaging in improper conduct.

17 Would you agree?

18 A. Yes. Not all of people at Janssen.

19 Q. And you would agree, Professor, that it would be fair for
20 our jurors to consider your conduct as you approached your
21 work as an expert witness for these lawyers.

22 Correct?

23 A. Yes.

24 Q. It would be fair for our jurors to judge your approach to
25 your job here in the same way you've judged Janssen.

SILLUP - CROSS - BROWN

1 Correct?

2 A. Yes.

3 Q. And one of the things that has happened, sir, over the
4 past two and a half weeks or so is that you have sat in the
5 back of the courtroom.

6 Correct?

7 A. Yes.

8 Q. And you have watched a document being used over and over
9 and over again in a way that you don't agree with.

10 Right, sir?

11 A. I have to understand what document -- the document to
12 which you're referring.

13 Q. And we're going to get to that. I'm going to put it up
14 and show you.

15 Okay, sir?

16 A. Okay.

17 Q. And, in fact, let me ask you: This presentation that you
18 just went over with counsel for Relators, did you select the
19 documents that went in here that you spoke to our jurors
20 about?

21 A. It was a combination of working with the legal team.

22 Q. All right.

23 MS. BROWN: Could I have the ELMO, please,
24 Mr. Knecht.

25 BY MS. BROWN:

—SILLUP - CROSS - BROWN—

1 Q. What about this one? Was this your decision to include
2 this particular document in this PowerPoint presentation you
3 just went over with our jurors?

4 A. There was a combination decision, and this is something I
5 recalled. It just bothered me about the way the MIR system
6 was being used.

7 Q. Was it your decision, sir, to cut out just a little piece
8 of this document to show our jury?

9 A. I can't say that it was.

10 Q. All right.

11 Have you forgotten, perhaps, sir, that this is a
12 document you've seen before?

13 A. I believe I saw it at some point over the past weeks.

14 Q. Have you forgotten, sir, that this is a document that you
15 testified about under oath?

16 A. I've looked at numerous documents. I may have.

17 Q. Have you forgotten, sir, that before you came into the
18 courtroom to testify about this PowerPoint that you put
19 together with the lawyers, you swore under oath that these
20 MIRs were appropriate?

21 A. MIRs are an appropriate tool if used appropriately.

22 Q. Let's look at the documents, sir, and see if I can
23 refresh you, and then we'll look at your testimony.

24 Okay, sir?

25 Let's look at the whole document. Okay?

SILLUP - CROSS - BROWN

1 First of all, this document is being sent to Tony
2 Dolisi.

3 Do you see that, sir?

4 A. Yes, I do.

5 Q. And you've never spoken to Tony Dolisi.

6 Correct, sir?

7 A. No, I have not.

8 Q. All right.

9 Any document that you've seen from Tony Dolisi, that's
10 been provided to you by lawyers.

11 Correct, sir?

12 A. Yes.

13 Q. All right.

14 And I want to direct your attention to another part of
15 this document that you've spoken about before and that didn't
16 make it into the PowerPoint presentation, and that's up here
17 under P.

18 Do you see that, sir?

19 A. Yes, I do.

20 Q. All right.

21 And it says -- first of all, to orient us, this is
22 September 14, 2006.

23 Do you see that, sir?

24 A. Yes. About three months after the approval.

25 Q. Yes, sir.

SILLUP - CROSS - BROWN

1 And what it says is "The Prezista message seems to be
2 gaining some momentum as customers are experiencing early
3 success with the first patients to be placed on therapy."

4 Do you see that?

5 A. Yes.

6 Q. All right.

7 "Many questions have come up around the durability of
8 48-week data that was presented at the IAC in Toronto."

9 Do you see that, sir?

10 A. Yes, I do.

11 Q. All right.

12 And the IAC is the International AIDS Conference.

13 Is that right, sir?

14 A. Yes.

15 Q. And you understand that, right about this time, the
16 48-week data was presented at a conference for doctors to
17 learn about even before it made it into the label.

18 Correct?

19 A. Yes. This could be -- not necessarily a definite pathway
20 to the label, but it would be information to expand from the
21 24 weeks -- I'm not sure what he means around the durability.

22 Q. Okay, sir.

23 My question is just: This information was presented at
24 a conference.

25 You're with me?

SILLUP - CROSS - BROWN

1 A. Yes, I am.

2 Q. All right.

3 Then the part that you cut out and put on your slide
4 was down here in T.

5 Do you see that?

6 A. Yes.

7 Q. And it says, "MIR forms are being widely used to get the
8 48-week data into the hands of all customers."

9 Do you see that?

10 A. Yes.

11 Q. And so we have MIR being used to get 48-week data into
12 the hands of all customers, and we have questions coming up
13 around 48-week data.

14 Do you see that?

15 A. Yes.

16 Q. And what was interesting to me, sir, is that when you
17 were asked to talk about this document in the slide deck that
18 you put together with the lawyers, I wrote down here -- and
19 you said it was clearly off-label promotion.

20 Do you remember saying that just now?

21 A. Yes. Yes, I did.

22 Q. And you've not seen something as bold as this being done
23 before.

24 Right?

25 A. Yes.

SILLUP - CROSS - BROWN

1 Q. Okay.

2 But the truth is, sir, at your deposition, you agreed
3 that a fair reading of this document is that the MIRs were
4 being used in response to questions about the 48-week data
5 that was being presented at the AIDS conference.

6 Do you remember that?

7 A. Yes.

8 MR. MARKETOS: Your Honor, I object. If she's going
9 to say that something was stated at the deposition, she
10 needs to --

11 THE COURT: Overruled. I'll allow the question.

12 MR. MARKETOS: All right.

13 BY MS. BROWN:

14 Q. Right, sir?

15 A. Well, I'm sorry. What was the question.

16 Q. Yes, sir.

17 At your deposition, when you were shown this document,
18 you agreed that a fair reading of this document was that the
19 48-week data was being provided in response to doctors'
20 questions coming out of the conference.

21 Right, sir?

22 A. Yes, sir.

23 Q. And at your deposition, rather than say this was clearly
24 off-label promotion, you agreed it's appropriate to answer
25 questions through the MIR process coming out of a conference

SILLUP - CROSS - BROWN

1 like this.

2 A. Yes.

3 Q. And so your testimony under oath, sir, about this very
4 same document was entirely inconsistent with what you came in
5 here to tell our jurors today.

6 A. My perspective in seeing this was -- it's the part that
7 really hit me, was the 48-week data being widely used, widely
8 disseminated. It seemed beyond just the questions. The
9 implication is it's beyond the response to a presentation
10 given at the conference.

11 Q. Sir, the -- when we asked you about this document, you
12 said a fair reading of what was going on here is that MIR
13 requests were being filled out in response to doctors'
14 questions that were being raised at that conference.

15 Do you remember that, sir?

16 A. Yes, I do.

17 Q. Okay. And then when you came in here today, you clipped
18 out that same document and you cut out the part that explains
19 where the questions about the 48-week data were coming from.

20 Right, sir?

21 A. We just used that one segment of it.

22 Q. Then when you came in here today, rather than saying a
23 fair read is that this was an appropriate response to
24 questions at a conference, you said it was clearly off-label
25 promotion.

SILLUP - CROSS - BROWN

1 Right, sir?

2 A. Yes.

3 Q. Now, Doctor -- excuse me -- Professor, you have been in
4 court every single day of this trial.

5 Correct?

6 A. Yes.

7 Q. And you've been sitting in the back here with some of the
8 other lawyers.

9 Correct?

10 A. Yes.

11 Q. Have you been charging the lawyers for the Relators' for
12 the time that you're spending here, sir?

13 A. Yes.

14 Q. And is that -- how much are you charging them per hour?

15 A. The same hourly rate.

16 Q. Okay.

17 As I understood that, that was \$400 an hour. Is that
18 right, sir?

19 A. Yes.

20 Q. And our schedule is shifting a little bit, thanks to the
21 good work of our jury, but it's basically been 9 to 4.

22 Correct?

23 A. Yes.

24 Q. All right.

25 So have you been charging the lawyers 7 hours a day

SILLUP - CROSS - BROWN

1 every day of this trial?

2 A. No. Take off for lunch and breaks.

3 Q. Okay. You deduct the lunch.

4 Right?

5 A. Yes.

6 Q. Okay.

7 So how many hours are you averaging about a day? Six?

8 A. Yes.

9 Q. Six hours a day at 400, I get \$2,400 a day.

10 Is that about right?

11 A. Yes. Before taxes.

12 Q. Okay.

13 So \$2,400 a day to sit here and watch.

14 Fair?

15 A. Yes.

16 Q. And that's -- we've been going about four days a week.

17 Right, sir?

18 A. Yes.

19 Q. All right.

20 So let's see how good my math is. I get \$9,600 for
21 each of the weeks, correct?

22 Does that sound right?

23 I'm going to show you. Check me on it.

24 A. That sounds right.

25 Q. Is that right?

SILLUP - CROSS - BROWN

1 16, carry the 1. That looks right. Right? Okay.

2 So almost \$10,000 for each week of this trial to watch.

3 True?

4 A. Yes.

5 Q. Okay.

6 So we're in week two and a half. You're over almost
7 \$20,000?

8 A. Yes.

9 Q. Are you staying with the legal team, or are you commuting
10 back and forth?

11 A. A combination. I was commuting, and I'm going to stay --
12 I stayed last evening; I'm going to stay this evening.

13 Q. Okay.

14 And that's at the DoubleTree with everybody?

15 A. Yes.

16 Q. All right.

17 And, of course, the lawyers are paying for you to stay
18 there as well.

19 Right, sir?

20 A. Yes.

21 Q. All right.

22 And so where we are at this point in the trial, then,
23 if you're putting in about six hours a day multiple weeks,
24 you've spent more time at this point watching the trial than
25 you spent putting together your initial expert report.

SILLUP - CROSS - BROWN

1 Fair, sir?

2 A. I can't recall how much time I spent initially. I'd say
3 close.

4 Q. Pretty much.

5 Right?

6 A. Yes.

7 Q. Because you told us initially, to put together your
8 initial report concluding that we were influencing physicians
9 and doing all sorts of bad stuff, that took you about 40
10 hours.

11 Right, sir?

12 A. Yes.

13 Q. All right.

14 And certainly you've been in this courtroom at the rate
15 of \$400 an hour more than 40 hours by now.

16 True?

17 A. Yes.

18 Q. All right.

19 And you have -- the fact of the matter is, sir, you've
20 heard a lot of stuff and seen a lot of documents in this trial
21 that you didn't know about before.

22 Right?

23 A. Yes. There was some new observations.

24 Q. Sure.

25 And that's pretty important to your opinions, sir,

SILLUP - CROSS - BROWN

1 because your opinion in this case is based on your
2 determination that the Relators and their friends are
3 credible.

4 Correct?

5 A. Yes.

6 Q. Right?

7 You read depositions of some Janssen folks and you read
8 depositions of Relators and their friends.

9 Correct?

10 A. Right. When I read those, I looked at -- I didn't know
11 about relationships, didn't care about relationships. I
12 approached it the same way I would assess any company going in
13 to help them with forecasting.

14 Q. Yes, sir.

15 And you made the assessment, looking at the cold
16 transcripts, that the Relators and their friends were
17 credible.

18 Correct?

19 A. Yes.

20 Q. And now you've sat in this courtroom for two and a half
21 weeks and you've learned a lot of things that you didn't know
22 about before.

23 True?

24 A. I would say some incremental knowledge.

25 Q. For example, you didn't know before you formed your

—SILLUP - CROSS - BROWN—

1 opinions in this case about the relationships between the
2 Relators and some of the friends who have testified.

3 Correct?

4 A. Yes.

5 Q. Okay.

6 You didn't know -- let me just put up a demonstrative
7 so we can orient ourselves to what you've seen.

8 MS. BROWN: Mr. Marketos, do you have an objection?

9 MR. MARKETOS: No objection.

10 THE COURT: All right.

11 MS. BROWN: Thank you.

12 BY MS. BROWN:

13 Q. So one of the things you've learned through the course of
14 sitting here charging money to watch is that Ms. Penelow and
15 Ms. Graham are friends.

16 Right, sir?

17 A. Yes.

18 Q. You learned, actually, that Ms. Graham -- and we have the
19 nice picture here -- was a bridesmaid in her wedding.

20 Correct?

21 A. Yes.

22 Q. All right.

23 And you learned that Ms. Graham has worked for
24 Ms. Strand several -- in several different companies.

25 Correct?

SILLUP - CROSS - BROWN

1 A. Yes.

2 Q. And you've learned that Ms. Graham now is actually living
3 with Mr. Wilhelm in Colorado.

4 Correct?

5 A. Yes.

6 Q. And you didn't know, but you learned that these folks
7 actually filed a lawsuit that was dismissed for a significant
8 percentage of money.

9 Right?

10 A. Yes.

11 Q. All right.

12 And you learned from Mr. Wilhelm that at least social
13 media-wise, he's friends with a gentleman named Mr. Grooms, we
14 haven't heard from yet.

15 Right?

16 A. Yes. And I wasn't sure about the relationship with
17 Matt Grooms. He's not been here yet.

18 Q. He has not been here yet.

19 Did you hear Mr. Wilhelm testify they're sort of
20 Facebook friends or friends on social media?

21 A. Yes, I did.

22 Q. All of these -- of course you know Ms. Penelow and
23 Ms. Brancaccio. They're the Relators.

24 Right?

25 A. Yes.

SILLUP - CROSS - BROWN

1 Q. All right.

2 And all of these things, of course, you didn't know at
3 the time that you formed your opinions in this case.

4 Correct, sir?

5 A. Yes.

6 Q. You also didn't, for example, know what Donna Graham came
7 in here to testify about when she said she had never heard of
8 people promoting Intelence in treatment naive.

9 You haven't known that before you came.

10 Correct?

11 A. No.

12 Q. Okay.

13 And, for example, you might have been surprised to hear
14 Ms. Strand testify for the first time that she thought maybe
15 she had gone to the FDA.

16 Do you remember that testimony?

17 A. Was that the one where she said she called the general
18 number?

19 Q. Yes, sir.

20 A. Okay.

21 Q. Do you remember that day?

22 A. I do recall.

23 Q. Right. And you were judging her credibility that day.

24 Right, sir?

25 A. Yes.

SILLUP - CROSS - BROWN

1 Q. All right.

2 And you remember the testimony she gave about that here
3 in this court was inconsistent with what she had said in her
4 deposition that she never reported anything.

5 Right, sir?

6 A. If you say so. I can't recall that.

7 Q. All right.

8 And then you were here, of course, when Ms. Brancaccio
9 testified.

10 Correct, sir?

11 A. Yes.

12 Q. And you heard her allegations about Nancy Bartnett.

13 True?

14 A. Yes.

15 Q. And you heard her allegations that Nancy Bartnett, of
16 course, didn't like Ray Pacini and was trying to make sure
17 that nobody -- none of the doctors got access to the
18 scientific liaison, Mr. Ray Pacini.

19 Correct?

20 A. I don't recall the name Ray Pacini.

21 Q. All right.

22 Do you remember listening to it on the tape, right,
23 where Nancy Bartnett actually invited Ray Pacini to come meet
24 with Dr. Turret?

25 Right?

SILLUP - CROSS - BROWN

1 A. Yes.

2 Q. Remember that being sort of inconsistent with what
3 Ms. Brancaccio had told our jurors?

4 A. Yes.

5 Q. All right.

6 And all the while, what you've been doing for \$400 an
7 hour in the back of the courtroom is sort of weighing the
8 credibility of the evidence that has come in in this case.

9 Fair?

10 A. Yes.

11 Q. Okay.

12 And despite everything you've seen over the last two
13 and a half weeks, you are firm on the opinion you came to
14 before you walked in here; that the Relators and their friends
15 are more credible than the Janssen witnesses and the Janssen
16 documents that say this never happened.

17 True?

18 A. Yes.

19 Q. All right.

20 One of the things, as I understand it, Professor, that
21 you were here to talk about is your belief that our sales reps
22 influenced the prescribing decisions of doctors.

23 Correct?

24 A. Yes.

25 Q. Okay.

SILLUP - CROSS - BROWN

1 And you know, though, that at the time you were asked
2 to form that opinion, you hadn't been provided with the secret
3 recording that we have of a sales visit with a doctor.

4 Right?

5 A. That's correct.

6 Q. You are the expert whose opinion is, do sales reps
7 influence physicians, and they didn't give you the one
8 recording of a sales visit with a physician?

9 A. I didn't ask. But based on my experience, I know that
10 presenting to physicians influences them.

11 Q. Yes, sir. I understand that's your opinion. We're going
12 to talk about that.

13 My question was just, you're the expert on causation,
14 right? Does what a sales rep says have any influence on a
15 physician, that's you.

16 Right?

17 A. Yes, yes.

18 Q. And we -- in this case we've learned there is one secret
19 recording of a sales visit with a physician. You know that
20 because you've been watching.

21 Right?

22 A. Yes.

23 Q. And yet the lawyers who hired you at \$400 an hour didn't
24 give it to you.

25 Right?

SILLUP - CROSS - BROWN

1 A. I didn't ask.

2 Q. Would you have expected to get any information that bared
3 on the topic you were being hired to opine on?

4 A. Yes.

5 Q. All right.

6 So when you heard it, sitting in the back of the
7 courtroom, you must have been a little surprised.

8 Right?

9 A. I'm -- honestly, I'm trying to recall exactly what that
10 recording was.

11 Q. Yes, sir. And it's in evidence.

12 I want to play you a piece of it because as you recall,
13 generally, it's about a visit that Ms. Brancaccio and
14 Ms. Bartnett had with an HIV doctor.

15 Do you remember that part?

16 A. Yes, I think so.

17 Q. All right.

18 His name is Glenn Turrett?

19 A. Somewhat, yes. And I will say, there might have been a
20 few times when I had to leave to take a phone call and may
21 have missed.

22 Q. Sure thing.

23 A. But I remember the name.

24 Q. Sure thing.

25 And you understand the claims that are being made in

—SILLUP - CROSS - BROWN—

1 this case is that every single time a sales rep went into a
2 doctor's office, they delivered four off-label messages and
3 that influenced a physician.

4 Do you understand that?

5 MR. MARKETOS: Objection, Your Honor. That
6 mischaracterizes --

7 THE COURT: Hold on.

8 MR. MARKETOS: -- the claims in this case.

9 THE COURT: Give me a second.

10 Sustained. Rephrase.

11 BY MS. BROWN:

12 Q. Do you understand that one of the things the Relators had
13 testified about while you've been watching is that they were
14 delivering off-label messages to doctors like Dr. Turrett?

15 A. Yes, I recall that.

16 But if I may expand, I did not have the understanding
17 that it was four off-label message -- four, the number four,
18 as opposed to an off-label message. That's a pretty heavy
19 delivery.

20 Q. Right.

21 It doesn't really make sense, right?

22 A. Right.

23 Q. Like, the sales rep is going into an office and
24 delivering four different off-label messages doesn't even make
25 sense.

SILLUP - CROSS - BROWN

1 A. Depends on what the message was.

2 Q. Yes.

3 But you've looked at the data in this case.

4 Right?

5 A. Yes.

6 Q. And you think that doesn't make sense.

7 Right?

8 A. I said it'd have to depend on -- respectfully disagree.

9 It'd have to depend on what the message was.

10 Q. And you know, sir, because you at least got to listen to
11 part of it, is that what we heard from Dr. Turrett on that
12 recording are explanations of why he prescribes HIV medicines.

13 Correct?

14 A. Yes.

15 Q. And as you would expect, he explained that some of those
16 reasons are patient preference.

17 Correct?

18 A. Yes. If I'm recalling correctly.

19 Q. All right.

20 And so it's in evidence, and I want to play it to you
21 where he talks about deferring to his patients on their
22 preference for medicine.

23 Okay, sir?

24 A. Uh-huh.

25 MS. BROWN: And then, Your Honor, would I have

—SILLUP - CROSS - BROWN—

1 permission to play what's already in evidence?

2 THE COURT: Yes.

3 MS. BROWN: Okay. Thank you.

4 It would be audio clip number 2, please, Mr. Knecht.

5 (Audio clip played at this time.)

6 BY MS. BROWN:

7 Q. Do you recall listening to that, Doctor, during the
8 course of the trial?

9 A. Somewhat. I don't know if I -- but listening to it now,
10 I'm --

11 Q. You're refreshed?

12 A. I'm refreshed.

13 Q. And, sir, you would agree one of the things Dr. Turrett
14 talks about on that taped video recording is how part of his
15 prescribing is based on what his patients prefer.

16 Correct?

17 A. That's what I've heard. That's what I heard him say,
18 yes.

19 Q. Yep.

20 And you know, sir, another thing that Dr. Turrett talks
21 about on that tape -- and this one we haven't listened to
22 yet -- is his view that if it ain't broke, you don't fix it.

23 Have you heard that from physicians when it comes to
24 prescribing?

25 A. Yes, I have.

SILLUP - CROSS - BROWN

1 Q. Because physicians, particularly in HIV, sometimes don't
2 want to mess with something that's working.

3 Right?

4 A. That's correct.

5 Q. All right.

6 Let's listen to what he had to say when Ms. Brancaccio
7 recorded him.

8 MS. BROWN: Your Honor, permission to play a portion
9 of clip 4, please.

10 THE COURT: Yes.

11 (Audio clip played at this time.)

12 BY MS. BROWN:

13 Q. And you heard there, Professor Sillup, that Dr. Turrett
14 was explaining, and Ms. Brancaccio was offering her views,
15 that sometimes patients don't want to switch off something
16 that's working for them.

17 Right?

18 A. Right.

19 Q. And that makes sense, doesn't it?

20 A. It does, unless there are times that the physician feels
21 the medicine needs to change because it's not working well
22 enough.

23 Q. Sure. Fair enough.

24 And what Dr. Turrett, though, actually starts off
25 describing here is when he, as a prescriber, sees a medicine

SILLUP - CROSS - BROWN

1 that's working in a patient, sometimes he'll leave it alone
2 because he doesn't -- if it ain't broke, don't fix it.

3 Right?

4 A. Yes.

5 Q. And you know, because you were here and we played it
6 already, that Dr. Turrett talked about his views on whether
7 Intelence should be dosed once a day or twice a day.

8 Do you remember that, sir?

9 A. Yes, I do.

10 Q. And his view and what he said was for him, as a doctor,
11 Intelence is not an option for once a day.

12 Correct?

13 A. Yes.

14 Q. He said -- and we had already listened to it with our
15 jurors -- that for him, it is a twice-a-day medicine.

16 Correct?

17 A. Yes.

18 Q. And you heard in this clip neither Ms. Brancaccio nor
19 Ms. Bartnett pushed back and tried to convince him, no, no,
20 no, you should prescribe it once a day.

21 Right?

22 A. He is prescribing the drug --

23 Q. Yes, sir.

24 A. -- as intended by the label.

25 Q. Yes, sir.

SILLUP - CROSS - BROWN

1 And the claims here, of course, in this case, are that
2 sales reps were in these offices all the time pushing once a
3 day.

4 Do you understand that?

5 A. I disagree in that there are times to discuss off-label
6 use. I don't think you're going to do it every single call,
7 but there are times when it's appropriate to do. And this was
8 one of those times. The patient is taking the drug. He or
9 she is doing well. Why change it?

10 As you say, if it isn't broke -- what's the saying? If
11 it ain't broke, don't fix it.

12 Q. If it ain't broke, don't fix it, right.

13 And at least for -- because you understand this is the
14 only recording we have in this case, right? You've been here,
15 you've seen that.

16 Right?

17 A. Yes.

18 Q. And at least for the one piece of evidence we have, you
19 would agree, there's no evidence that Ms. Brancaccio or
20 Ms. Bartnett were pushing a once-a-day message for Intelence.

21 Correct?

22 A. Well, but it's only an N of one. Very difficult to draw
23 conclusion that perhaps, on another call, that discussion
24 would be open to off-label.

25 Q. We don't know.

SILLUP - CROSS - BROWN

1 Right?

2 A. We don't know, but you can't base a decision on an N of
3 one. It's just like a small -- it could be just random.

4 Q. I want to talk to you about the evidence that we do have,
5 though.

6 Fair enough?

7 A. Okay. Yes.

8 Q. Because our jurors are going to be asked to make a
9 decision based on the evidence that comes in in this case, so
10 that's what I'm going to talk to you about.

11 Okay?

12 A. Yes.

13 Q. And at least the evidence that we have of a recorded
14 discussion with a physician, we can agree doesn't show any
15 promotion of Intelence for -- for once a day.

16 Correct?

17 A. For one sales call.

18 Q. Yes, sir.

19 That's what we're talking about.

20 Right?

21 A. Yes.

22 Q. You know actually this sales call last lasted almost
23 45 minutes.

24 Did you know that, sir?

25 A. I didn't, but that's not unusual. Earlier I said that a

SILLUP - CROSS - BROWN

1 substantive call for a disease entity like this is -- that's
2 not surprising.

3 Q. Right.

4 And you know similarly, sir, in this recording, the
5 only one we have, there were no messages being given to
6 Dr. Turrett to prescribe Intelence in naive patients.

7 Correct, sir?

8 A. In that one sales call, no.

9 Q. Right.

10 And you heard at the very end of the call Ms. Bartnett
11 talking about Prezista with Dr. Turrett.

12 Correct?

13 A. Yes.

14 Q. And you heard Nancy Bartnett at the end of the call
15 comparing the doses of ritonavir and Reyataz and Prezista.

16 Correct?

17 A. Yes.

18 Q. She says they both have 100 milligrams of ritonavir.

19 Right?

20 A. Yes.

21 Q. And you know from listening to the evidence in this case
22 and looking at the guidelines and the documents, it's that
23 ritonavir dose in part that can cause lipid issues.

24 Correct?

25 A. It's contributory. They're used in tandem.

SILLUP - CROSS - BROWN

1 Q. Yes, sir.

2 And you know one of the things that sales reps are
3 permitted to compare are dosing.

4 Correct?

5 A. Depending on the -- since you have those data from a
6 clinical study where doses were run next to each other.

7 Q. You know, sir, in terms of what sales reps are allowed to
8 do?

9 A. Yes.

10 Q. They can make a comparison from on dose. They can say,
11 This is 100 milligrams and this is 100 milligrams. You know
12 that.

13 Right, sir?

14 A. Yes.

15 Q. Okay. That's what we heard Nancy Bartnett do on
16 Dr. Turrett's tape.

17 Do you remember that?

18 A. Yes.

19 Q. All right.

20 And let's listen to that, because I want to ask you
21 something about the lipid message that's discussed here.

22 MS. BROWN: If we could, with the Court's permission,
23 play clip 5, please.

24 THE COURT: You may.

25 MS. BROWN: Thank you.

SILLUP - CROSS - BROWN

1 (Audio clip played at this time.)

2 BY MS. BROWN:

3 Q. And, Professor, you heard at the beginning of that clip
4 that we played there Dr. Turrett giving his view about what
5 was going to be Reyataz's deck now.

6 Do you remember that?

7 A. Yes.

8 Q. And what he's talking about is once Prezista became
9 approved for once daily dosing, in this provider's mind, that
10 was going to be Reyataz's death now because they didn't have
11 any -- anything else superior to Prezista.

12 Correct?

13 A. Yes. What was confusing to me was the fact that saying
14 that there's no concern about lipids.

15 Q. Yes, sir.

16 And there was a discussion at the end that Dr. Turrett
17 agreed with that both Reyataz and Prezista are dosed with a
18 hundred milligrams of ritonavir.

19 Correct, sir?

20 A. Yes.

21 Q. And Nancy Bartnett used the term "relatively lipid
22 friendly."

23 Did you hear that, sir?

24 A. Yes.

25 Q. And one of the things that you know but you haven't

SILLUP - CROSS - BROWN

1 looked at in this case is that a number of Janssen's
2 promotional messages and promotional materials were sent to an
3 organization at the FDA called DDMAC.

4 Correct?

5 A. Yes, familiar with it.

6 Q. You're very familiar with it because you've been in
7 marketing.

8 Right, sir?

9 A. Yes.

10 Q. And you know about DDMAC's 2253 process.

11 Correct, sir?

12 A. Yes.

13 Q. And you understand that what companies like Janssen do
14 before they give approved messages to sales reps like
15 Ms. Brancaccio and Ms. Penelow is that they send them to the
16 FDA through a 2253 process.

17 Correct?

18 A. Yes.

19 Q. And in terms of what messages Janssen sent to the FDA
20 regarding lipids, that's not something you've reviewed in
21 connection with your opinions in this case.

22 Correct, sir?

23 A. No, I did not.

24 Q. Those documents were not made available and provided to
25 you. Fair enough?

SILLUP - CROSS - BROWN

1 A. I didn't think they were available.

2 Q. Yes, sir.

3 Did you ask for them?

4 A. No.

5 Q. All right.

6 And you -- I looked at the -- there's a list of
7 depositions that you read, and it looks like you also didn't
8 have the ability to read the deposition of Amit Patel from
9 Janssen who was the regulatory officer in charge of those
10 submissions.

11 Correct?

12 A. Right.

13 Q. All right.

14 So that piece of the puzzle, to be fair, is just not
15 something you have an opinion on.

16 Correct?

17 A. That's right.

18 Q. All right.

19 I want to talk to you a little bit, sir, about some of
20 the science- -- or academic support you provided to us for
21 your opinions in your expert report.

22 Okay?

23 A. Okay.

24 Q. And our jury has heard a lot about experts and expert
25 reports, but one of the things you do is type up a report with

—SILLUP - CROSS - BROWN—

1 all of your opinions and all of the support for your opinions.

2 Is that a fair summary?

3 A. Yes.

4 Q. All right.

5 A. Yes.

6 Q. And certainly you did that as it related to your opinions
7 that -- that our sales reps, that our marketing influenced
8 physicians.

9 Correct?

10 A. Yes.

11 Q. Okay.

12 And, of course, before you do that, you made sure that
13 you were relying on reputable sources of information to
14 support your opinions.

15 Correct, sir?

16 A. Yes.

17 Q. Because you wouldn't want to take thousands of dollars
18 for working as an expert witness and rely on stuff that isn't
19 credible.

20 Correct?

21 A. Yes.

22 Q. All right.

23 And so let me show you what I want to ask you some
24 questions about in your report, and it's in the section called
25 "Academic and Marketing Literature Show Marketing Influences

SILLUP - CROSS - BROWN

1 Physician Script-Writing."

2 Okay, sir?

3 A. Yes.

4 Q. All right.

5 So let's get there. Okay. This is the section that I
6 wanted to talk to you about. It's -- there is the title. You
7 say that there is literature, like academic literature that
8 supports your opinion that sales reps influence physicians.

9 Right?

10 A. Yes.

11 Q. All right.

12 And so your first sentence says, "Academic literature
13 abounds."

14 Do you see that?

15 A. Yes.

16 MR. MARKETOS: Your Honor, may we approach.

17 THE COURT: You may.

18 (Sidebar begins at 2:47 p.m.)

19 THE COURT: What are we looking at?

20 MR. MARKETOS: Publishing the expert report on the
21 ELMO right now.

22 THE COURT: Is that his report?

23 MS. BROWN: Yes.

24 THE COURT: How do you get to publish that in front
25 of a jury?

SILLUP - CROSS - BROWN

1 MS. BROWN: I apologize, Your Honor. I apologize for
2 putting it up. You're right. I should not have done that.

3 THE COURT: All right. Because that's what it was,
4 and I thought maybe I'm mistaken. You can't just publish his
5 expert report.

6 MS. BROWN: You're exactly right. I apologize. I
7 will -- I will just show it to him and ask him about the
8 citation. I should not have put it in front of the jury.

9 MR. MARKETOS: To be clear, she's trying to impeach
10 him with a prior -- with a prior out-of-court hearsay
11 statement that wasn't offered to begin with.

12 So this is -- she's asking about an expert report. He
13 testified. He didn't put his expert report into evidence.
14 So...

15 THE COURT: What are you attempting to do with the
16 expert report? So I understand.

17 MS. BROWN: Sure. I want to talk to him about the
18 sources that he relies on for his opinion that doctors -- that
19 sales reps caused physicians to prescribe in certain ways.

20 THE COURT: That's fine, but what you can't do is
21 show him the report --

22 MS. BROWN: Sure.

23 THE COURT: -- but even privately. Forget about
24 publicly. You can't show him the report and say, Let me read
25 off of this report.

—SILLUP - CROSS - BROWN—

1 It's basically the same thing as publishing a report.
2 What you can say is Do you recall the particular documents?
3 No. Would it help -- seeing your report, would that refresh
4 your recollection? Yes.

5 You show it to him. He looks at it. Then you say,
6 What is your view? So let's do it that way.

7 MS. BROWN: Yes. I appreciate it.

8 (Sidebar was concluded at 2:49 p.m.)

9 (Open court.)

10 THE COURT: You may continue.

11 MS. BROWN: Okay.

12 BY MS. BROWN:

13 Q. Doctor, I want to talk to you about some of the things
14 you relied on as the scientific evidence for your opinion that
15 sales reps caused doctors to prescribe in certain ways.

16 Okay?

17 A. Yes.

18 Q. Okay.

19 And do you recall relying on -- and you believe, sir,
20 that there is a substantial amount of academic literature that
21 would support your opinion that you've given our jury that
22 sales reps influence doctors.

23 Correct?

24 A. Yes.

25 Q. And you studied some of that literature in your expert

SILLUP - CROSS - BROWN

1 report.

2 Correct, sir?

3 A. Yes.

4 Q. All right.

5 And one of the very first academic cites you provide to
6 us is by a Dr. Van Groningen.

7 Do you know that, sir?

8 A. Yes.

9 Q. Okay.

10 And you believe Dr. Van Groningen, of course, is a
11 reliable source of information.

12 Correct?

13 A. Yes.

14 Q. All right.

15 And that's why you put it in your expert report.

16 Correct?

17 A. Yes.

18 Q. She -- her publication from 2017 supports your opinion
19 that you gave our jury.

20 Correct?

21 A. Yes.

22 Q. All right.

23 But you know, sir, that what Dr. Van Groningen actually
24 wrote was a newspaper article.

25 Right, sir?

SILLUP - CROSS - BROWN

1 A. Yes.

2 Q. It's not a scientific study.

3 Correct?

4 A. That's -- that's right.

5 Q. Right.

6 And you know that when Dr. Van Groningen wrote the
7 newspaper study, the newspaper article, she was about a year
8 out of medical school.

9 Correct?

10 A. I -- I knew she had graduated recently.

11 Q. Okay.

12 And you're familiar with statements that
13 Dr. Van Groningen has made about sales reps.

14 Correct?

15 A. Yes.

16 Q. All right.

17 And you've seen some of her public statements regarding
18 sales reps?

19 A. I can't say I've seen them recently.

20 Q. Okay.

21 You know that Dr. Van Groningen actually is what's
22 called a TikTok influencer.

23 Right, sir?

24 A. I was not aware of that.

25 Q. No?

—SILLUP - CROSS - BROWN—

1 Have you looked at any of her posts online about issues
2 that she frequently writes about?

3 A. No, I have not.

4 Q. Have you seen her TikTok videos about what she thinks
5 about sales reps?

6 A. No, I have not.

7 Q. Should we look at one?

8 A. If you'd like to.

9 Q. Okay.

10 MS. BROWN: Your Honor, would I have permission to
11 show the video?

12 THE COURT: This is not in evidence, correct?

13 MS. BROWN: It is not, Your Honor.

14 THE COURT: So you don't have permission to show it.
15 Are you moving to admit it?

16 MS. BROWN: Yes, Your Honor.

17 THE COURT: Any objection from counsel?

18 MR. MARKETOS: That would be hearsay, Your Honor.
19 Objection. Hearsay.

20 THE COURT: Ms. Brown, what's the exception to
21 hearsay?

22 MS. BROWN: I'm not offering it for the truth,
23 Your Honor. I'm offering it for the fact that it exists, and
24 it is a source on which he relied.

25 THE COURT: Mr. Marketos, you get one more shot.

—SILLUP - CROSS - BROWN—

1 MR. MARKETOS: Your Honor, I'm not sure I understand,
2 but I think this is an impeachment of a doctor from an
3 article.

4 THE COURT: It's an impeachment of a source that
5 allegedly Professor Sillup relied upon, in part, in his
6 report.

7 MR. MARKETOS: Yeah. Still object to hearsay,
8 Your Honor.

9 THE COURT: All right. It's not being offered for
10 the truth, so it's not hearsay, so if that's the only
11 objection, it's overruled, and you can play it.

12 MS. BROWN: Okay. And so --

13 THE COURT: Just so I know though, what is this,
14 TikTok?

15 MS. BROWN: Yes, Your Honor.

16 THE COURT: It's not something inappropriate or
17 something like that. Do I have to look at this first?

18 MS. BROWN: I'll show it to you first, if you want.

19 THE COURT: Yeah, let me see it first.

20 MS. BROWN: Sure.

21 THE COURT: And also, is there an exhibit number?
22 Because if it's in, I'd to know what it was identified as.

23 MS. BROWN: Yes, Your Honor, I have it as D-9074.

24 THE COURT: All right. Is there a way for me to see
25 it and hear it without the jurors hearing it? I just don't

SILLUP - CROSS - BROWN

1 know what it is. And social media makes me nervous. All
2 right?

3 MS. BROWN: Can we take an early break?

4 THE COURT: We can do our -- we can do our short
5 little -- short second afternoon break. I can review it, and
6 then we can do just a longer stretch.

7 For the jurors, would that work? We can go from 3:00
8 to 5:00?

9 All right. I'm going to do the break. If we need to
10 take another one, we will, but I need time to see this without
11 you all looking at it, so I'm going to dismiss the jurors.

12 THE DEPUTY COURT CLERK: All rise.

13 (Jurors exit courtroom.)

14 THE COURT: You can step off. Ms. Brown, while we're
15 still on the record -- folks, you can be seated, but I have
16 one question.

17 I've overruled the hearsay objection, but how -- I
18 don't know anything about this video, so how -- you can't get
19 it through this witness. So how do I know what it is or what
20 it purports to be? It's going to be on space? I'm going to
21 see this? All right.

22 MS. BROWN: She is in the video.

23 THE COURT: All right. Let me see it. Well, why
24 don't we --

25 MS. BROWN: Are you going to be able to hear it, too?

SILLUP - CROSS - BROWN

1 THE COURT: Yeah, am I going to be able to hear it
2 too?

3 THE WITNESS: Yeah, you will.

4 THE COURT: Well, then, Professor, I'm going ask you
5 to step out. Yep.

6 And I appreciate this may be all for nothing, but I
7 have no idea what this video is.

8 How long is it, Ms. Brown?

9 MS. BROWN: 30 seconds maybe.

10 THE COURT: Okay.

11 MS. BROWN: Statements about sales reps.

12 THE COURT: Is this the only video of this particular
13 source?

14 MS. BROWN: There's a second one actually that's
15 30 seconds that -- if you would look at as well.

16 THE COURT: All right.

17 (Video clip played at this time.)

18 THE COURT: That's the whole video?

19 MS. BROWN: Yes, Your Honor.

20 THE COURT: And is the other one similar in nature to
21 that?

22 MS. BROWN: Yes.

23 THE COURT: And the purpose of this is simply to -- I
24 guess some form of impeachment of one of the sources he relied
25 upon?

—SILLUP - CROSS - BROWN—

1 MS. BROWN: Yes.

2 THE COURT: Is there any reason to believe that's not
3 the person that purports to have written that article that
4 Professor Sillup relied upon, Mr. Marketos?

5 MR. MARKETOS: Your Honor, I would say that there's
6 reason to believe that this is irrelevant, and she is a doing
7 a character attack on an out-of-court statement that wasn't
8 offered through this witness about a report and now a doctor
9 who wrote a report and a TikTok attack --

10 THE COURT: Well, let's -- that's a lot of things to
11 untangle.

12 So the first -- the first objection was -- and the only
13 objection so far is hearsay. Right?

14 It's pretty clear that Ms. Brown is not offering this
15 for the truth of anything she's saying in there. She's
16 offering it to say, That's the person you're relying upon,
17 right, this person, who went to med school for one year.

18 Now, by the way, I'm not necessarily agreeing with that
19 tactic. What I'm saying is that's permissible. He relied
20 upon certain sources. That's one of them.

21 And you can make whatever counterargument you want to
22 that. I don't even know what the article is. I don't know
23 anything about this individual.

24 But I'm not going to prohibit Janssen from
25 cross-examining the professor on at least some of what he may

—SILLUP - CROSS - BROWN—

1 have relied upon for purposes of his expert opinion. I think
2 that's fair game.

3 If you want to rehabilitate that on redirect, you have
4 that permission.

5 What's the second issue, or is there no other?

6 MR. MARKETOS: I guess I could find some other
7 TikToks. The problem is that she is not in court -- this is
8 an attack on somebody who wrote a report that he didn't
9 offer -- he didn't offer any opinion about this to the jury.

10 So she's trying to impeach a report through a
11 collateral attack that is is a TikTok attack.

12 THE COURT: Forget about the report. His opinion in
13 court is based on his expert report. Correct?

14 MR. MARKETOS: His opinion that he offered today,
15 Your Honor, was based on academic consensus in the field, and
16 she is taking a Washington Post opinion report and then
17 attacking that doctor with a TikTok.

18 THE COURT: All right. My understanding -- and if
19 you're telling me this is incorrect -- because I'm not going
20 to do tit-for-tat for ten minutes on this, so let's be very
21 clear.

22 Professor Sillup is testifying.

23 MR. MARKETOS: Yes, sir.

24 THE COURT: His expert report, in part, is based on
25 things he reviewed.

SILLUP - CROSS - BROWN

1 Correct, yes or no?

2 MR. MARKETOS: Yes, Your Honor.

3 THE COURT: One of things he reviewed is an article
4 from this individual in a TikTok video as an author, correct?

5 MR. MARKETOS: Yes, Your Honor.

6 THE COURT: So that is a source -- not all the
7 sources, but that is at least one source that he relied upon
8 for purposes of his expert opinion which he gave in court
9 today.

10 Yes?

11 MR. MARKETOS: Yes, Your Honor.

12 THE COURT: Well, then why can't Janssen impeach some
13 of the sources he relied upon to say, Your opinion is faulty
14 because some of what you relied upon is not reliable.

15 MR. MARKETOS: But -- okay. Maybe so, Your Honor,
16 except the impeachment would have to be on the subject matter
17 of the article, and she's playing a TikTok video about seeing
18 medical reps in a hospital.

19 THE COURT: No. She's impeaching the author of one
20 of the sources, which I think is fair, so I don't know if you
21 want to rehabilitate that or say it's not material or it's
22 not -- the impeachment is ineffective. I mean, all those
23 things you have as your tools.

24 But -- so it would be no different than, say, there was
25 a study and one of the physicians who authored the study that

—SILLUP - CROSS - BROWN—

1 Professor Sillup relied upon is, you know, rotting in prison
2 for committing, you know, 90 different offenses, including
3 fraud in his literature and plagiarism.

4 Would she not be able to cross-examine this witness and
5 say, Are you aware that the author of one of the studies that
6 you relied upon committed all these pieces of misconduct,
7 including plagiarism and lied about statistics and lied about
8 this?

9 How would that be improper cross-examination?

10 MR. MARKETOS: If it's about the article --

11 THE COURT: No. It's about the author, the source of
12 the article.

13 MR. MARKETOS: Yeah. So you're now attacking a
14 character for truthfulness of an expert report that wasn't
15 offered --

16 THE COURT: Reliability. I'm not saying
17 truthfulness. I'm not saying anybody lied here.

18 MR. MARKETOS: But I think she is. I think the point
19 of this for the jury is that this person was saying this thing
20 on TikTok, so then the study that -- the opinion that she gave
21 about -- that he relied on for his report is somehow -- it's
22 not even impeachment.

23 I don't even know what it is.

24 THE COURT: All right.

25 MR. MARKETOS: We can play something about everybody

—SILLUP - CROSS - BROWN—

1 in every report and find something off of Facebook, but this
2 witness did not offer anything about this person, and it's
3 certainly not impeachment of the article that she wrote in the
4 Washington Post on pharmaceutical representatives.

5 So, Your Honor, I really feel bad even objecting. If
6 she wants to go down this road, that's her prerogative, but it
7 is --

8 THE COURT: Then why are we wasting my time with it
9 then?

10 MR. MARKETOS: Because it's improper impeachment of a
11 collateral source that is is out of court. She's
12 double-hearsaying this issue. She's saying it's not offered
13 for the truth, but it's to attack the credibility of a source
14 that even --

15 THE COURT: Yeah, but you keep using hearsay as your
16 objection, right?

17 So let's just go back to the foundation of that
18 objection, right? Hearsay is the use of an out-of-court
19 statement, right, for the truth of the matter asserted.

20 Where in this event is anything being offered to the
21 jury for the truth of the matter being asserted in this
22 particular video?

23 Because I'm confident, at least in understanding what's
24 going on here, that she's not going to say anything this
25 person says is truth. It's almost the opposite.

SILLUP - CROSS - BROWN

1 Wouldn't you agree with that?

2 MR. MARKETOS: Yes, Your Honor.

3 THE COURT: So then at least based on the objection
4 you're giving me, it's overruled.

5 MR. MARKETOS: I understand.

6 THE COURT: If there's some other objection, you
7 haven't articulated it because everything you've been telling
8 me for the last ten minutes falls under hearsay.

9 But if it's not for the truth of the matter asserted,
10 then that objection is going to be overruled. If there was
11 some other basis for it, you have to articulate it to the
12 Court.

13 I'm not going to find the objection for you. So that's
14 where we are. That's my decision on it.

15 Where are we, because we've now put the jury out here
16 for a few minutes?

17 All right. I'm going allow it. Let's get Professor
18 Sillup back in. Let's get the jury.

19 And I presume that you've got one or two videos, and
20 then you're going to ask him questions about this --

21 MS. BROWN: Is this what you relied on?

22 THE COURT: If this is who he relied upon?

23 MS. BROWN: Correct.

24 THE COURT: And then you're moving on.

25 MS. BROWN: Correct.

SILLUP - CROSS - BROWN

1 THE COURT: I'll permit it. If there's anything more
2 than that, Ms. Brown, we may revisit.

3 MS. BROWN: I understand.

4 THE COURT: All right.

5 MS. BROWN: I may only do just one of them.

6 THE COURT: All right.

7 MS. BROWN: Thanks, Judge.

8 (A short recess occurred.)

9 THE DEPUTY COURT CLERK: Please remain seated.

10 THE COURT: Before we get the jurors, though, Ms.
11 Brown, what are you going to do? Are you going to show them
12 this video and say this is the author of the article?

13 MS. BROWN: Yes. I think, Your Honor, I would ask
14 permission to first show her profile so he can refresh on what
15 she looks like and then --

16 THE COURT: Yeah. Do you want to do that before I
17 get the jurors all back? I guess you've got to wait for the
18 jurors to do that.

19 MS. BROWN: Yeah.

20 THE COURT: But you're going to show her photograph
21 or something.

22 MS. BROWN: Correct. Correct.

23 THE COURT: Let's do that.

24 MS. BROWN: Mr. Klein just reminded me to do that,
25 yes.

—SILLUP - CROSS - BROWN—

1 THE COURT: Yeah. I just wanted to be clear.

2 MS. BROWN: Yeah, yeah, yeah. Thank you, Your Honor.

3 I appreciate that.

4 THE COURT: All right. And, Mr. Marketos, your
5 objections are noted. But it's going to be short, and so here
6 we go.

7 MS. BROWN: 30 seconds.

8 THE COURT: So are we getting back? Are we getting
9 ready?

10 MR. MARKETOS: It's a first for me. I think he's
11 coming, yes.

12 THE COURT: There's been a lot of firsts for all of
13 you, including me here. Suffer through it. All right.

14 THE DEPUTY COURT CLERK: All rise.

15 (Jury enters the courtroom.)

16 THE COURT: All right, folks. Let's all be seated.
17 All right, Ms. Brown, you may proceed.

18 MS. BROWN: Thank you very much, Your Honor.

19 BY MS. BROWN:

20 Q. Professor, when we left off, we were talking about your
21 reliance on a newspaper article that was written by a Dr.
22 Nicole Van Groningen.

23 Do you recall that, sir?

24 A. Yes, I do.

25 Q. Okay.

SILLUP - CROSS - BROWN

1 And you know who Dr. Van Groningen is.

2 Correct, sir?

3 A. Yes.

4 Q. Okay.

5 And I want to show you just her bio so you can refresh
6 on what she looks like.

7 MS. BROWN: It's just for the witness and counsel, if
8 I could, please.

9 BY MS. BROWN:

10 Q. This is Dr. Van Groningen, who wrote the newspaper
11 article that you rely on to support your opinion.

12 Correct, sir?

13 A. Yes.

14 Q. All right.

15 And as we were talking about, the author, the doctor
16 that you rely on for this scientific support, is actually a
17 TikTok influencer.

18 Do you recall that?

19 A. I recall you saying that.

20 Q. Yes.

21 And we are going to look at some of the things that
22 Dr. Van Groningen has to say when she -- about sales reps when
23 she posts on TikTok.

24 MS. BROWN: And, Your Honor, with that, it would be
25 permission to play D-9074.

SILLUP - CROSS - BROWN

1 THE COURT: You may. And the objection is noted.

2 (Video clip played at this time.)

3 BY MS. BROWN:

4 Q. And that's Dr. Van Groningen on -- influencing on TikTok.

5 Right, sir?

6 A. Yes.

7 Q. And that is the source of the very first article or
8 newspaper article that you rely on in your report to support
9 the opinion that you've given our jury.

10 Correct, sir?

11 A. Yes.

12 Q. All right.

13 And do you know she actually has other TikTok videos
14 where she gives medical advice based on what she would or
15 would not do as a doctor?

16 Do you know that?

17 A. No, I did not.

18 Q. Do you want to see one more?

19 A. Not particularly, but if you'd like to share it...

20 Q. Okay.

21 THE COURT: Ms. Brown, I think one is enough, because
22 I don't even know what the second video is, so I'm not going
23 to break out for the second.

24 MS. BROWN: I understand. I understand.

25 BY MS. BROWN:

—SILLUP - CROSS - BROWN—

1 Q. Have you read some of her additional publications about
2 her views on exercise and the like?

3 A. When I determine these, I did a literature search, and I
4 looked at a combination of what's in the peer-reviewed
5 literature, the type Dr. Glatt was discussing the other day,
6 as well contemporary stuff.

7 As you know, literature that's in the peer review can
8 last a long time. They take two years to get out there. So
9 some of the more contemporary stuff, such as a newspaper
10 article, might be very helpful.

11 Q. Sure.

12 And so what you cited for what Dr. Van Groningen wrote,
13 that wasn't peer-reviewed literature.

14 Right, sir?

15 A. No, it was not.

16 Q. No.

17 A. Editorially reviewed.

18 Q. It was an opinion piece in a newspaper.

19 Right, sir?

20 A. Yes.

21 Q. And that actually wasn't the only newspaper article that
22 you relied on for your opinions in this case.

23 Right, sir?

24 A. Yes. Yes.

25 Q. Because you also referred to a U.S. News and World Report

SILLUP - CROSS - BROWN

1 study written by someone named Ms. Howley.

2 Do you recall that, sir?

3 A. Yes.

4 Q. All right.

5 And that U.S. News and World Report study was actually
6 an article written by a freelance journalist.

7 Right?

8 A. Yes.

9 Q. All right.

10 And do you know anything about the qualifications of
11 that journalist?

12 A. Other than the article itself, no.

13 Q. Okay.

14 And those at least, sir, are two of the citations that
15 you provided as the basis for your opinion that sales reps
16 influence doctors.

17 Correct, sir?

18 A. Yes.

19 Q. All right.

20 And, in fact, in addition to Dr. Van Groningen and
21 Ms. Howley, you did provide a scientific, peer-reviewed
22 article by Larkin.

23 Correct, sir?

24 A. Yes.

25 Q. You recall that and you read it.

SILLUP - CROSS - BROWN

1 Correct?

2 A. I can recall somewhat, yes.

3 Q. You read it?

4 A. I looked through it, yes.

5 Q. Okay. You skimmed it?

6 A. Yes.

7 Q. All right. It's in your report as the source for your
8 opinion.

9 Right?

10 A. Yes.

11 Q. All right.

12 But you know that article concluded, we can't say that
13 pharmaceutical sales reps cause doctors to do something they
14 wouldn't otherwise do.

15 Right, sir?

16 A. Yes.

17 Q. Okay.

18 A. I wanted to address fair balance.

19 Q. You wanted to address fair balance?

20 A. To address fair balance. Some work, some don't.

21 Q. I'm not sure I understand what you mean.

22 A. Some articles strongly suggest.

23 Q. Sure. I see.

24 A. Others do not.

25 Q. I think I understand what you're saying.

SILLUP - CROSS - BROWN

1 There's some articles, like Dr. Van Groningen's
2 article, that supports the opinion that you've given our jury.

3 Correct?

4 A. Yes.

5 Q. But there's other articles and other data and other
6 scientific evidence that go the other way.

7 Fair?

8 A. Yes.

9 Q. Okay. I got you. Fair balance. Okay.

10 A couple other quick areas I want to go through with
11 you, sir. You -- let's talk a little bit about how you got
12 involved in being an expert here.

13 Okay, sir?

14 A. Yes.

15 Q. All right.

16 You agreed to serve as an expert witness for the
17 lawyers for the Relators before you ever looked at a single
18 document.

19 Correct?

20 A. That's correct.

21 Q. Okay.

22 You -- you signed up to testify for the Relators
23 without looking at any of the documents in the case.

24 A. Well, if I may, there was an interview process during
25 which we talked about this. And what resonated for me was the

SILLUP - CROSS - BROWN

1 fact that it was right in the wheelhouse of marketing, and it
2 was also Johnson & Johnson, which is a very sensitive area for
3 me.

4 Q. Yes, sir.

5 Because you used to work for us.

6 Right?

7 A. Yes, I did.

8 Q. All right.

9 And so you were interviewed. Did you say there was an
10 interview process to be an expert?

11 A. We discussed this. Primarily to the attorneys.

12 Q. Okay.

13 And you sort of felt that it was an interview; like,
14 would-you-get-the-job type of a thing?

15 A. Yes.

16 Q. You got the job?

17 A. Yes.

18 Q. Okay.

19 But when you were interviewing for the job, you didn't
20 look at any documents. You just listened to what the lawyers
21 told you about the case.

22 Right?

23 A. Gave -- give an overview.

24 Q. Sure.

25 And based on what the lawyers told you, you did well in

SILLUP - CROSS - BROWN

1 the interview.

2 Correct?

3 A. It sounded interesting. I do a lot of consulting. I
4 don't do a lot of expert witnessing.

5 Q. Sure.

6 A. But it sounded interesting.

7 Q. Okay.

8 And that's how you got involved.

9 Right?

10 A. Yes.

11 Q. Okay.

12 You were provided documents by the lawyers to get
13 started on forming your opinion.

14 Correct?

15 A. Yes.

16 Q. And you described those set of documents as a starter
17 kit.

18 Do you remember that?

19 A. Yes.

20 Q. Okay.

21 So they sort of put together a little start -- after
22 the interview, you get the job as an expert, and then they
23 provide you a starter kit of documents that they want you to
24 review.

25 Fair?

SILLUP - CROSS - BROWN

1 A. Yes.

2 Q. Okay.

3 And the documents were selected by the lawyers.

4 Correct?

5 A. That's correct.

6 Q. All right.

7 And after you looked at the starter kit, you asked for
8 a couple of additional documents.

9 Correct?

10 A. Yes.

11 Q. All right.

12 And ultimately, sir, you provided us with the number of
13 the documents where you identified for us the documents that
14 you looked at to form your opinion.

15 Right, sir?

16 A. Yes.

17 Q. Okay.

18 And you know that if you count up all the documents on
19 the list, it's 54 documents.

20 Does that sound right?

21 A. It sounds right. I didn't count them, but it feels
22 right.

23 Q. Okay.

24 And you would agree, at least during the time period
25 just that you've been sitting in this trial, we've looked at

SILLUP - CROSS - BROWN

1 more than 54 documents.

2 Right?

3 A. Yes.

4 Q. And you understand, generally, that hundreds of
5 thousands, if not millions, of pages of documents were
6 produced in this case.

7 Correct?

8 A. Yes.

9 Q. So we can agree that in forming your opinion, in addition
10 to the starter kit from the lawyers, you reviewed a teeny-tiny
11 portion of the documents here.

12 Right?

13 A. Albeit small, I thought it was meaningful. And I combine
14 that with my experience assessing these type of situations.

15 Q. Yes, sir.

16 But you would agree you didn't look at the overwhelming
17 majority of documents that were produced in the case.

18 Fair?

19 A. No, I did not.

20 Q. Okay.

21 And so one of the things that happened as a result of
22 just getting a small starter kit is that you provided opinions
23 on topics that you hadn't had the opportunity to look at any
24 documents.

25 Isn't that fair?

SILLUP - CROSS - BROWN

1 A. Albeit a small sample, I thought it was very telling.

2 Often when I'll consult with companies, I have less

3 information than that.

4 Q. Yeah.

5 Well, but here's the thing. Let's take a topic that
6 you offered an opinion on.

7 Okay?

8 A. Okay.

9 Q. One of those topics -- and you spoke to our jurors about
10 it this afternoon -- were sales forecasts.

11 Do you remember that?

12 A. Yes, I do.

13 Q. Okay.

14 And you told us sort of your view of Janssen's
15 forecasts setting when it came to Prezista.

16 Correct?

17 A. Yes.

18 Q. And that would have been back in 2006.

19 Correct?

20 A. Yes.

21 Q. But, sir, you didn't actually review the 2006 forecast
22 for Prezista.

23 A. I just had the snapshot at one month of a -- the July and
24 then --

25 Q. Well, let's chat on that a little bit.

SILLUP - CROSS - BROWN

1 You offered opinions about the forecast.

2 Do you remember that?

3 A. Yes.

4 Q. You even offered opinions about what would have happened
5 to Mr. Mattes if they didn't meet the forecast.

6 Do you remember that?

7 A. Yes, I do.

8 Q. Okay.

9 You don't actually know anything about Mr. Mattes's
10 compensation.

11 Right, sir?

12 A. No, I don't.

13 Q. Okay.

14 You've never spoken to him.

15 Correct?

16 A. Nope.

17 Q. He wasn't questioned on whether or not he was compensated
18 at or below his expected salary.

19 Right?

20 A. That's correct.

21 Q. Right.

22 So when you testified about what might have happened to
23 Mr. Mattes, to be fair, you don't know.

24 A. In terms of his compensation.

25 Q. Yes, sir.

SILLUP - CROSS - BROWN

1 A. In terms of reporting on a forecast, I'd respectfully
2 disagree. I would say that he would definitely want to have a
3 discussion with his management.

4 Q. Right.

5 Whether he had a discussion with management or the
6 board or somebody else, you don't know.

7 A. I don't know that.

8 Q. Okay.

9 And in terms of the opinions that you offered as it
10 relates to the 2006 sales forecast, we can agree that's a
11 document you never looked at.

12 Right, sir?

13 A. That's correct.

14 Q. All right.

15 And that's true, actually, for the entire time period
16 that's at issue in this case, 2006 to 2014. You never looked
17 at any of those forecasts.

18 Right, sir?

19 A. That's correct.

20 Q. Okay.

21 And you had not seen and were not aware, sir, at the
22 time you offered these opinions about forecasting and stuff
23 that the forecast was lowered a number of times in 2006.

24 Right, sir?

25 A. I learned that it was lowered one time during the trial.

SILLUP - CROSS - BROWN

1 Q. That's been one document that's come in on that score.

2 Right?

3 A. Yes.

4 Q. And you haven't seen, because they weren't in the starter
5 kit, any of the other documents that relate to lowering of the
6 forecast.

7 True?

8 A. True.

9 Q. And you spoke about how you thought forecasts that you
10 had never seen might affect sales quotas.

11 Do you remember that.

12 A. Yes.

13 Q. But similarly, you haven't looked at sales quotas either.

14 Right, sir?

15 A. That's correct.

16 Q. Right?

17 And you talked about how that might impact an
18 employee's compensation.

19 Do you remember that?

20 A. Yes. I talked about that and the impact on the challenge
21 of meeting a quota.

22 Q. Sure thing.

23 But to be fair in this case, you didn't look at any of
24 the compensation that Ms. Penelow, for example, Ms. Brancaccio
25 received each year that they worked for us.

SILLUP - CROSS - BROWN

1 Right?

2 A. That's correct.

3 Q. So you don't actually know whether or not these sales
4 reps or other sales reps had a salary that increased every
5 single year that they worked at the company.

6 Right?

7 A. That's right. I would expect that if someone's
8 performing, unless you were on a performance improvement plan,
9 then you're not going to see a salary increase.

10 Q. Sure.

11 And in terms to whether -- of whether or not these
12 sales reps or other sales reps received bonuses during the
13 relevant time period, you didn't have the opportunity to
14 review that -- those documentation either.

15 Right, sir?

16 A. That's correct. I didn't know those data were available.

17 Q. You spoke a little bit -- well, let's just look at it, if
18 we could.

19 You showed our jurors during your slide deck --

20 MS. BROWN: May I have the ELMO, please.

21 BY MS. BROWN:

22 Q. This is one of the documents that was pasted into your
23 slide deck, sir. Does this look familiar to you?

24 A. Yes.

25 Q. Okay.

SILLUP - CROSS - BROWN

1 And I think what was highlighted and what you and
2 Mr. Marketos were discussing had to do with this paragraph
3 right here. This is an email from Keith Moran.

4 Do you see that?

5 A. Yes, I do.

6 Q. And who -- please tell our jurors who Keith Moran is.

7 A. I'm sure he's somebody in the Janssen network looking for
8 information.

9 Q. Well, for sure he works for Janssen, but do you know what
10 he does?

11 A. No, I do not.

12 Q. All right.

13 He's an executive compensation. Does that ring a bell
14 to you?

15 A. Now it does, yes.

16 Q. Okay. All right.

17 So Mr. Moran is talking about whether or not
18 Ms. Kenworthy -- now, do you know who she is?

19 A. She is one of the depositions, yes.

20 Q. Yes, sir.

21 Ms. Kenworthy is in business analytics. Does that help
22 ring a bell?

23 A. Yes.

24 Q. All right.

25 And so he's asking about whether we have the number of

SILLUP - CROSS - BROWN

1 spontaneous off-label sales for these three medicines.

2 Do you see that?

3 A. Yes.

4 Q. And you heard through the testimony here Edurant was
5 another HIV medicine that we sold during the time period at
6 issue.

7 Right, sir?

8 A. Yes.

9 Q. Okay.

10 And you haven't formed any views at all on whether or
11 not we were promoting Edurant off-label.

12 Right?

13 A. I have not looked at Edurant.

14 Q. And you haven't looked at Ms. Penelow's and
15 Ms. Brancaccio's compensation as it related to Edurant that
16 they were selling.

17 Correct?

18 A. That's correct.

19 Q. And you haven't done a comparison, for example, to see
20 whether or not their bonuses for Edurant that they claim they
21 weren't promoting off-label were higher than Prezista and
22 Intelence, which they claim they were.

23 Right?

24 A. Yeah, I have not seen that information.

25 Q. Okay.

SILLUP - CROSS - BROWN

1 And so it happened -- so you and counsel concentrated
2 on this top part, looking for a number of spontaneous
3 off-label sales.

4 Do you remember that?

5 A. Yes.

6 Q. Okay.

7 But what it says underneath it is, we're being asked to
8 compile this across all brands that will be in the 2012
9 incentive plans.

10 Do you see that?

11 A. Yes, I do.

12 Q. Were you provided with Janssen's employee compensation
13 policy that required off-label sales to be backed out of
14 employee compensation?

15 A. No, I was not.

16 Q. Okay.

17 A. May I add that it's highly unusual to track spontaneous
18 sales. As I mentioned earlier, I don't like the term, but the
19 off-label use of the product.

20 Q. Yes. So let's connect on that for a second.

21 Spontaneous off-label sales. You would agree with me
22 that doctors in their good medical judgment can prescribe a
23 medicine off-label.

24 A. Yes, they can.

25 Q. True.

SILLUP - CROSS - BROWN

1 And we know that happens all the time.

2 Right, sir?

3 A. Yes, it does.

4 Q. Right.

5 You're a marketer. You know that from your marketing
6 experience.

7 Right, sir?

8 A. Yes.

9 Q. All right.

10 And it happens particularly often in the area of HIV.
11 We can agree with that.

12 Right, sir?

13 A. Yes.

14 Q. Okay.

15 And you know because you were a marketer, and you saw
16 the data, that pharmaceutical companies get data that allows
17 them to see where doctors might be prescribing their medicines
18 off-label.

19 Right?

20 A. Yes.

21 Q. Okay.

22 That doesn't mean they're promoting off-label, but it
23 allows them to see where doctors are writing those
24 prescriptions.

25 True?

SILLUP - CROSS - BROWN

1 A. True, but one would have to look behind the number of
2 off-label or spontaneous off-label prescriptions.

3 Q. Sure. Good point.

4 I mean, you want to look at it and be careful that it's
5 truly spontaneous, but it's data that pharmaceutical companies
6 get to evaluate the entire market.

7 Correct?

8 A. Yes.

9 Q. And there's nothing wrong with that.

10 Right, sir?

11 A. That's correct.

12 Q. All right.

13 And you had access to data like that when you were
14 working in industry.

15 Correct?

16 A. Yes.

17 Q. And it's important for reasons Dr. -- Mr. Mattes told us
18 this morning, because pharmaceutical companies are responsible
19 for making sure that there's enough drugs produced in the
20 factory to stock pharmacy shelves.

21 Correct?

22 A. Combination -- combination of that. That's not unusual
23 that you do 10 percent more to make sure you're meeting a
24 spontaneous demand and then 10 percent less so you can keep it
25 running. It's a -- it's a -- it has a short shelf life.

SILLUP - CROSS - BROWN

1 Q. Yes, sir.

2 A. So a product -- so product can update.

3 Q. Right.

4 Because the -- particularly in the area of HIV, the one
5 thing you don't want to happen is people coming to the
6 pharmacy to fill scripts, and there's not enough physical
7 medicine in the pharmacy to give it to them.

8 Right?

9 A. That's true for any drug.

10 Q. Sure.

11 But it's a particular concern with a lifesaving drug
12 like HIV medicine.

13 Correct?

14 A. Yes.

15 Q. Okay.

16 And so when -- when companies have this data, one thing
17 that they can do is pull that sales data out of employee
18 compensation so that sales reps are not getting credit for
19 prescriptions that are being written off-label.

20 Right?

21 A. That's correct.

22 Q. And you'd agree that's a good thing.

23 Right?

24 A. Yes, you want to --

25 Q. All right.

SILLUP - CROSS - BROWN

1 And in terms of Deb Kenworthy's testimony on that score
2 and Mr. Moran's document that talk about our effort to do
3 that, that's not something you reviewed in connection with
4 your opinion.

5 Right, sir?

6 A. That's correct.

7 Q. All right.

8 One thing I wanted -- one more thing on this PowerPoint
9 presentation I wanted to ask you about, sir.

10 Here's this slide that you showed, and here's my note
11 on what you said about the slide, and I want to ask you if we
12 can help understand what's going on here.

13 So this is a slide, we can agree, that says, "We should
14 sequence our intervention segment A, F, G, H, within the
15 context of our label."

16 Do you see that?

17 A. Yes.

18 Q. All right.

19 But your testimony about this slide was, quote, "The
20 plan was to capture more patients than were in the label."

21 Do you see that?

22 A. Yes.

23 Q. Okay.

24 So how is it that you interpret a slide that says
25 "intervene in the context of the label" as meaning the plan

—SILLUP - CROSS - BROWN—

1 was to capture people outside of the label?

2 A. Well, it doesn't make sense to me that you're addressing
3 segments of the patient population outside the label.

4 Q. But, sir, you know, because if you look beyond sort of
5 the part that was cut out, down here at the bottom there is an
6 analysis percentagewise of how many people are in the label --
7 are on-label in these -- in these categories.

8 Right, sir?

9 A. Yes.

10 Q. You see that?

11 A. Yes.

12 Q. Right.

13 So there's an effort on this slide actually to identify
14 in each of these segments who would be on-label.

15 Right, sir?

16 A. Yes.

17 Q. All right.

18 The other thing that happened with this presentation
19 that I want to ask you about is a slide about speakers.

20 Now, you -- and when you were testifying you showed
21 this document here, Relators' 156.

22 Do you see that, sir?

23 A. Yes, I do.

24 Q. Okay.

25 And the title of your slide that you put together I

SILLUP - CROSS - BROWN

1 think is called "off-label marketing caused prescriptions."

2 Do you see that?

3 A. Yes.

4 Q. And you had some opinions here about return on investment
5 of the speaker program.

6 Do you see that?

7 A. Yes.

8 Q. And you know, as somebody who has a lot of experience in
9 the industry, that speaker programs can be run appropriately.

10 Right, sir?

11 A. Yes.

12 Q. You have experience with them yourself.

13 Correct?

14 A. Yes.

15 Q. And speaker programs can be run to educate and promote to
16 the members of the audience.

17 Fair?

18 A. The primary message is education, promotion or discussion
19 about the product on-label.

20 Q. Yes, sir.

21 A. You navigate off-label, it takes a different posture.

22 Q. Sure thing.

23 When done appropriately, on-label message to members of
24 the audience, speaker programs can be a good educational tool.

25 Correct?

—SILLUP - CROSS - BROWN—

1 A. Yes.

2 Q. They can be a way to promote medicines to doctors in the
3 audience.

4 Correct?

5 A. Yes.

6 Q. What they can't be is a way to pay the speaker to
7 prescribe.

8 Correct?

9 A. They -- in some instances, my observation not only in
10 this case but also in other situations, there is financial
11 incentive, paying to prescribe.

12 Q. Okay.

13 I'm going get to that in a second. I'm just talking
14 generally speaker programs. What you are not allowed to do is
15 pay a speaker to prescribe more medicine.

16 Can we agree on that?

17 A. You were not supposed to do that, yes.

18 Q. Correct.

19 And so one of the things that's perfectly fine and that
20 you were involved in when you were in the industry is to
21 conduct a return on investment or look at whether these
22 speaker programs are affecting the doctors who are attending
23 the program.

24 Right, sir?

25 A. Yes.

SILLUP - CROSS - BROWN

1 Q. There's nothing wrong with that. That's what the program
2 is meant to do.

3 Right?

4 A. Let's say a tertiary goal, education, awareness about the
5 product, and then you're going to say was it financially worth
6 it.

7 Q. Correct.

8 And one thing you know that does not exist and that you
9 have not seen are Janssen documents that show Janssen was
10 tracking speakers to see how much they prescribed or didn't
11 prescribe after a speaker event.

12 Correct?

13 A. I have not seen those data.

14 Q. Okay.

15 And, in fact, this document -- you know that Janssen
16 gets prescription data on all physicians that are sort of in
17 the area of its medicine.

18 Correct?

19 A. Yes.

20 Q. So as a result, it has prescription data on speakers
21 generally if they're in the area that it's prescribing its
22 medicines.

23 Correct?

24 A. Yes.

25 Q. But you know that Janssen was particularly careful not to

SILLUP - CROSS - BROWN

1 look at data of speakers who were attending speaker events.

2 Right, sir?

3 A. I wasn't aware of that.

4 Q. Because this slide that you put up here actually cuts
5 some stuff out from the actual document, Relators' 156. You
6 see this is Relators' 156 down here? That's the document your
7 slide came from.

8 Right, sir?

9 A. Yes.

10 Q. But when you go to the actual document, there's something
11 important, you and I I'm sure can agree, down here on the
12 bottom.

13 You see, down here on the bottom, what it says is
14 "Doctors with more than one attendance" -- this is at the
15 speaker programs -- "have been removed as they are most likely
16 speakers."

17 Do you see that?

18 A. I do see that.

19 Q. And so that part, though, didn't make it to the slide
20 that you showed our jurors.

21 Right, sir?

22 A. That's correct.

23 Q. All right.

24 As it relates to the speaker program itself, sir, you
25 have not reviewed Janssen's policies on how to run a speaker

SILLUP - CROSS - BROWN

1 program.

2 Correct?

3 A. No, I have not.

4 Q. Okay.

5 You don't know anything about our SAFE committee in
6 terms of how speakers are selected.

7 Right, sir?

8 A. I do not know that specifically. I know -- I know
9 generally from the industry.

10 Q. Sure.

11 You have experience because you have run speaker
12 bureaus in your career.

13 Is that right?

14 A. Yes.

15 Q. You believe that there is a proper way to run a speaker
16 bureau.

17 True?

18 A. That's correct.

19 Q. If you are careful about the way you're selecting people
20 to be on your speakers bureau, it can be a good thing.

21 Right, sir?

22 A. Yes.

23 Q. All right.

24 And in terms of the details of how we ran our speaker
25 program, you haven't looked at those documents.

SILLUP - CROSS - BROWN

1 Right, sir?

2 A. No, I have not.

3 Q. Okay.

4 And in terms of the fair market value caps that were
5 put on payments to speakers, that's also something you -- you
6 haven't looked at those documents.

7 Correct?

8 A. I have not. What -- if I may, what I did observe is just
9 the sheer number of speaker programs, which is quite
10 extensively high.

11 Q. Have you looked, sir, at Janssen's needs assessment
12 documents that evaluated how many programs we needed and where
13 throughout the United States of America we needed them?

14 A. I was not privy to that information.

15 Q. Fair enough.

16 You would agree one thing that's a good feature of a
17 speaker program is to conduct something called a needs
18 assessment.

19 Right, sir?

20 A. Yes.

21 Q. Because you don't want to just be, like, having programs
22 everywhere if you haven't carefully analyzed Is there a need
23 for this information?

24 Right?

25 A. Yes.

—SILLUP - CROSS - BROWN—

1 Q. And you know because you heard Dr. Mattes talk about it
2 today, in addition to doing promotional speaker programs, we
3 also did community programs.

4 Are you familiar with that?

5 A. Yes.

6 Q. We had programs that were not meant to increase the sale
7 of the medicine amongst prescribers but were meant for
8 patients. You're familiar with that.

9 Right, sir?

10 A. Yes.

11 Q. So some of the numbers of the programs you saw actually
12 included those community presentations as well.

13 Do you know that?

14 A. I did not know that.

15 Q. And some of the other presentations we did were disease
16 awareness presentations.

17 Did you see some of those documents, sir?

18 A. I -- I did.

19 Q. Right.

20 And those are actually speaker presentations where you
21 don't mention the name of any particular product. You know
22 that.

23 Right, sir?

24 A. Exactly. It's to create awareness about the disease, in
25 this case, HIV.

SILLUP - CROSS - BROWN

1 Q. Sure. That's a good thing.

2 Right, sir?

3 A. Yes.

4 Q. And a lot of the programs that would have been on the
5 list you saw were disease awareness programs as well.

6 Did you know that?

7 A. Yes, now that you remind me.

8 Q. Okay.

9 Let me show you --

10 MS. BROWN: Mr. Marketos, if you don't have an
11 objection.

12 MR. MARKETOS: No objection.

13 MS. BROWN: Okay.

14 BY MS. BROWN:

15 Q. -- a slide that we've shown to a couple of people now.
16 This is sort of the way our speakers got selected.

17 And just to be clear, you're not familiar with the
18 documents that involve who was on Janssen's speaker bureau
19 team.

20 Correct?

21 A. Correct.

22 Q. And you don't know anything about who made up the
23 SAFE committee or the policies in terms of how they practiced.

24 Right, sir?

25 A. That's correct.

—SILLUP - CROSS - BROWN—

1 Q. You were asked some questions in your deposition about
2 whether it would be appropriate to have speakers on your
3 speaker bureau who are high prescribers.

4 Do you remember that, sir?

5 A. Yes.

6 Q. And your opinion is that it actually makes sense to have
7 people on the speaker bureau who prescribe a lot of medicine
8 because they have experience with it?

9 A. Well, you want someone experienced. You might also want
10 clinical trialists, someone who participated in your -- in
11 your clinical study.

12 Q. Yes, sir.

13 Because you wouldn't want people on a speaker bureau
14 who weren't able to answer questions and didn't know actual
15 data and evidence about your medicine.

16 Right?

17 A. Correct.

18 Q. All right.

19 I mean, if you didn't have people on your speaker
20 bureau who were actually prescribing your medicine, you might
21 be accused of just paying people to speak, and they're not
22 really giving any educational information.

23 Right?

24 A. That's correct.

25 Q. Right.

SILLUP - CROSS - BROWN

1 And just one more quick area for you, Dr. Sillup. And
2 at the very end of your questioning, counsel kind of beat me
3 to the punch because you know I've been showing this graphic
4 to a lot of witnesses.

5 MS. BROWN: Any objection?

6 MR. MARKETOS: No.

7 MS. BROWN: Okay.

8 BY MS. BROWN:

9 Q. I've been showing this graphic to most folks who are
10 coming in here to testify to try and understand what side of
11 this your testimony is on.

12 You're not here, of course, to give any testimony about
13 the reimbursement requirements that CMS has for these
14 medicines.

15 Correct, sir?

16 A. That's correct.

17 Q. Or how Plan D sponsors determine whether they should send
18 claims to CMS.

19 True?

20 A. True.

21 Q. Your testimony, you are on the left side of our graph
22 here talking about sales reps and doctors.

23 Correct, sir?

24 A. Yes.

25 Q. All right.

SILLUP - REDIRECT - MARKETOS

1 MS. BROWN: Your Honor, may I have one minute to
2 confer with counsel.

3 THE COURT: You may.

4 MS. BROWN: Okay.

5 (Brief pause.)

6 BY MS. BROWN:

7 Q. Professor, I don't have any more questions for you.
8 Thanks so much for your time. I appreciate it.

9 THE COURT: All right. Thank you, Ms. Brown.
10 Mr. Marketos, any redirect?

11 MR. MARKETOS: Yes, Your Honor. Thank you.

12 (REDIRECT EXAMINATION BY MR. MARKETOS:)

13 Q. Professor Sillup, I don't have any videos to play for
14 you, sir, but I have some questions about the evidence that's
15 been presented in this case and the opinions that you gave
16 earlier on in your testimony today.

17 Okay, sir?

18 A. Okay.

19 Q. All right.

20 So you were asked a question about a doctor who you got
21 to see her on TikTok. There was an article cited in your
22 report. That doctor, she wrote an article about the influence
23 that pharmaceutical representatives have on doctors.

24 Do you recall that?

25 A. Yes.

SILLUP - REDIRECT - MARKETOS

1 Q. That was one of 82 articles that you attached to your
2 report.

3 Right, sir?

4 A. That's correct.

5 Q. All right.

6 Now, just as a matter of interest -- I don't have any
7 videos to show you -- do you know where Ms. --
8 Dr. Van Groningen practices medicine?

9 A. No, I do not. I selected the article based on its
10 discussion about sales reps.

11 Q. Sir, you're -- you have a bachelor's degree in
12 psychology.

13 Is that right?

14 A. Yes.

15 Q. You also have degrees in and you teach in the areas of
16 marketing.

17 Right, sir?

18 A. Yes.

19 Q. Do you teach students on the art of persuasion and
20 techniques that are used to persuade?

21 A. Yes.

22 Q. All right.

23 Sir, do you know what -- have you ever heard of the
24 term gaslighting?

25 A. Yes.

SILLUP - REDIRECT - MARKETOS

1 Q. And do you -- do you know what flipping and projection
2 is?

3 A. No.

4 Q. All right.

5 Have you ever heard a phrase described when something
6 is really bad for somebody and they turn around and make it
7 good for themselves?

8 All right.

9 You were played -- just wondering, sir: Are you aware
10 of the fact that there is an expert in this case who has
11 responded in part to your report? He goes by the name
12 Dr. Jena?

13 A. Yes, I am.

14 Q. Maybe we'll hear from Dr. Jena. He's an expert that
15 Janssen is proffering, and we might hear from him in this
16 case.

17 You understand that?

18 A. Yes, I do.

19 Q. And he's had -- offered some opinions that, as I
20 understand it, are partial rebuttals to your opinions.

21 A. Yes.

22 Q. Do you understand that?

23 A. Yes, they are.

24 Q. Dr. Jena charges \$850 an hour.

25 Are you aware of that?

SILLUP - REDIRECT - MARKETOS

1 A. Yes. I read his rebuttal --

2 Q. All right.

3 A. -- report.

4 Q. You charge -- you charge \$400 an hour, and you're a
5 professor.

6 Is that fair?

7 A. Yes.

8 Q. All right.

9 And Dr. Jena has not been -- has not been here at trial
10 along with the members of the jury.

11 Is that fair?

12 A. Unless -- unless it's someone whom I don't know.

13 Q. Why attend trial? Is it so that you can charge money to
14 the Relators?

15 A. No. For me it was to get a fuller understanding of the
16 perspectives.

17 Q. Okay, sir.

18 And is there an opportunity to learn things at trial
19 when, for instance, Janssen's witnesses are cross-examined
20 that you might not have known before?

21 A. Yes.

22 Q. All right.

23 You were asked about some of the documents you were and
24 weren't provided when you first set out on your effort to
25 render an opinion in this case.

SILLUP - REDIRECT - MARKETOS

1 Right, sir?

2 A. Yes.

3 Q. Now, we showed -- and there's a reason I showed you
4 this -- your report and the depositions that you relied on in
5 order to form your opinions.

6 Do you recall that?

7 A. Yes, I do.

8 Q. You reviewed over 112 hours' worth of testimony that was
9 given by the witnesses in this case before you rendered your
10 opinion, didn't you?

11 A. Yes, I did.

12 Q. That included Janssen's witnesses and that included
13 witnesses that are -- the Relators themselves and witnesses
14 that provided declarations in favor of the Relators.

15 You understand that?

16 A. Yes, I do.

17 Q. You also reviewed over 300 exhibits that were attached to
18 that -- those deposition transcripts that the lawyers
19 apparently felt was important to share with those witnesses.

20 Do you agree?

21 A. Yes.

22 Q. And then you reviewed a number of other documents that
23 Ms. Brown asked you about. And you reviewed documents during
24 the course of this trial.

25 Is that fair?

SILLUP - REDIRECT - MARKETOS

1 A. That is fair.

2 Q. All right.

3 Now, you didn't review a million pieces of evidence.

4 Is that fair?

5 A. That is fair. And I'm glad the way I was presented the
6 information, in bite-sized pieces -- I think it would be very
7 intimidating to get a million sheets of paper at one time.

8 Q. And, Professor Sillup, you heard Janssen's own witnesses
9 testify about whiffing on the forecast themselves.

10 Right, sir?

11 A. Yes, I do.

12 Q. So coming to trial, did you get to hear Janssen's
13 witnesses agree with the assessments that you originally made
14 in this case?

15 A. Yes, I did.

16 Q. All right.

17 And just a quick aside, sir. Are you aware of the fact
18 that the doctor we just saw the TikTok of is actually on a
19 tactical opioids panel with Dr. Jena, Janssen's witness, their
20 expert witness, who they're paying \$850 an hour?

21 A. I was not. She never ceases to amaze me from this --

22 Q. All right.

23 Maybe we'll hear from Dr. Jena what he thinks about the
24 woman on TikTok. Okay?

25 A. Okay.

SILLUP - REDIRECT - MARKETOS

1 Q. All right, sir.

2 If we could, sir, this concept of Prezista and
3 Intelence -- as I understood it, there was a statement made:
4 If it ain't broke, you don't fix it.

5 Right, sir?

6 A. Yes.

7 Q. And that's actually something Dr. Glatt testified about.
8 He was testifying about if a patient is doing well on a drug
9 and they even switch doctors, there's a likelihood that the
10 doctor won't switch them off that drug.

11 Right, sir?

12 A. Yes.

13 Q. Okay.

14 But if a doctor is delivered promotional messages,
15 maybe promotional messages off-label, they may be inclined to
16 switch a patient who is already on, say, Reyataz to Prezista.

17 Is that fair?

18 A. It could influence their decision.

19 Q. It could influence their decision. And if that hadn't
20 happened in this case, if it weren't possible because doctors
21 didn't do that, we wouldn't see Prezista and Intelence making
22 hundreds of millions of dollars in the marketplace, would we?

23 A. It does have a staying power and influence.

24 Q. Then you were played -- and I was asking you about the
25 art of persuasion and the concepts of flipping and projection.

SILLUP - REDIRECT - MARKETOS

1 You were played an audio tape that Ms. Brancaccio took one
2 time. You were present during her cross-examination.

3 Do you recall that?

4 A. Yes.

5 Q. Do you remember Ms. Brancaccio testifying about that
6 audio tape of Nancy Bartnett? And you recall her testifying
7 about why she did that one recording.

8 Do you recall that?

9 A. Yes.

10 Q. Because Janssen in this trial would otherwise accuse
11 Ms. Brancaccio of making up her story about off-label
12 promotion, including by Ms. Bartnett, who is on the tape.

13 Right, sir?

14 A. Yes.

15 Q. And then you got to hear a different part of the
16 45-minute conversation played to you about QD dosing.

17 Right, sir?

18 A. Yes.

19 Q. But Ms. Brancaccio had made that tape about Ms. Bartnett
20 showing that she was telling doctors that Prezista was like
21 Reyataz.

22 Do you recall hearing that on the tape?

23 A. Yes. Yes, I do.

24 Q. All right, sir.

25 That testimony and that exhibit was offered for a

SILLUP - REDIRECT - MARKETOS

1 different reason than you just heard from Ms. Brown.

2 Is that fair?

3 A. Yes.

4 Q. That doctor also testified that with respect to
5 Intelence -- or excuse me. He was on the tape saying, with
6 respect to Intelence QD dosing, he had been burned once
7 before.

8 Did you hear that?

9 A. Yes, I did hear that.

10 Q. So when you say that maybe not all off-label messages are
11 delivered at the same time, perhaps that doctor, Dr. Turrett,
12 had heard about QD dosing for Intelence, and it had burned him
13 before with another patient.

14 Sound fair?

15 A. It is possible.

16 Q. All right.

17 Now, I also heard this was the only one piece of
18 evidence that we have about off-label marketing. Did you
19 understand that to be the question, that this audio tape was
20 the --

21 A. Was the one and, I even noted, it's an N of 1. So it's
22 very difficult to draw a conclusion from that.

23 Q. Did you hear the president of the organization this
24 morning testifying in front of this jury that he believes it's
25 probable that off-label marketing concerns were brought to his

SILLUP - REDIRECT - MARKETOS

1 attention?

2 A. Yes, I did.

3 Q. All right.

4 Have you sat through the trial -- I wanted to show you,
5 sir -- this is in evidence -- Defendants' Exhibit 8560.

6 Defendants actually, in order to examine Ms. Graham on one
7 piece of her declaration, they put her 30-page declaration
8 into evidence, and I'm going to bring it up now very briefly.
9 This is 8560.

10 If the jury wants to see a 30-page rendition of how
11 off-label marketing worked within Janssen during the time
12 period that Ms. Donna Graham was here, they can just pull up
13 Defendants' 8560 and read her sworn testimony there.

14 Is that fair?

15 A. Yes.

16 Q. Did you hear Ms. Graham testify?

17 A. Yes, I did.

18 Q. Did you hear Ms. Sara Strand testify?

19 A. Yes, I did.

20 Q. Did you hear Mr. Mark Wilhelm testify?

21 A. Yes, I did.

22 Q. And did you hear Ms. Christy Brancaccio testify?

23 A. Yes, I did.

24 Q. Now, I can put a document on the screen, and I could show
25 lines connecting different people who used to work at Janssen

SILLUP - REDIRECT - MARKETOS

1 to one another.

2 Is that fair?

3 A. Sure.

4 Q. In fact, Ms. Nancy Bartnett was also at Ms. Penelow's
5 wedding. Were you aware of that?

6 A. No, I was not.

7 Q. All right.

8 Is this case about who was at whose wedding or who was
9 off-label promoting for Prezista and Intelence for hundreds of
10 millions of dollars?

11 A. No. As I said when I began this, I knew no one. I
12 looked at this completely from a blank slate.

13 Q. All right.

14 And we got to hear from two of the highest members of
15 Janssen who were responsible for that management. That was
16 the president, and the national sales director,
17 Mr. Iacobellis.

18 Right, sir?

19 A. Yes.

20 Q. All right.

21 MR. MARKETOS: If we take a look at Exhibit 423,
22 please.

23 You were asked -- actually, yes. Exhibit 423. Let's
24 go to, actually, Exhibit 301 if we could, please, Ms. Johnson.

25 BY MR. MARKETOS:

SILLUP - REDIRECT - MARKETOS

1 Q. You were asked by Ms. Brown a moment ago about this
2 spontaneous -- spontaneous off-label sales.

3 Do you recall that?

4 A. Yes, I do.

5 Q. Okay.

6 Your concern, and the only thing I asked you about, was
7 asking -- or tracking spontaneous off-label sales.

8 Do you recall that?

9 A. That's correct. Yes, I do.

10 Q. And what's the -- how are spontaneous off-label sales
11 even trackable?

12 Do you remember me asking you that question?

13 A. Very difficult to do that, unless someone were using
14 specific off-label strategies.

15 Q. Okay.

16 Now, I understood the questions that you got from
17 Ms. Brown to be related to that second sentence at the bottom.
18 "We are being asked to compile this across all brands that
19 will be in the 2012 incentive plans."

20 And she asked you were you aware of the fact that
21 Janssen was removing off-label sales from the incentive plans
22 for sales reps.

23 Do you recall that line of questioning?

24 A. Yes, I do.

25 Q. All right.

SILLUP - REDIRECT - MARKETOS

1 Do you know why that was, sir?

2 A. I'm not sure.

3 MR. MARKETOS: Let's take a look, if we could, at the
4 Relators' Exhibit 423, the 2010 corporate integrity agreement
5 that required compliance by Janssen with rules associated with
6 off-label promotion.

7 And if we'll turn to page 56 and 57.

8 BY MR. MARKETOS:

9 Q. You can see at the top there, sir, there are certain
10 policies and systems that Janssen had to put into place in
11 order to comply with its agreement with the Government.

12 Right, sir?

13 A. Yes.

14 Q. The agreement with the Government that Janssen entered
15 into in 2010.

16 Right, sir?

17 A. Yes. I see it.

18 Q. If we take a look at page 57, they were required to
19 remove any incentive for off-label sales from their sales
20 force's compensation plan.

21 Do you see that?

22 A. Yes, I do.

23 Q. Okay.

24 So up until 2011, apparently that was something that
25 had not yet been done.

SILLUP - REDIRECT - MARKETOS

1 Do you agree?

2 A. I agree.

3 Q. I think you said, we hadn't seen anything -- or at least
4 Ms. Brown said, you haven't seen anything with Janssen
5 tracking speaker prescriptions. And I think what she was
6 asking you about was documents you had seen before you issued
7 your report.

8 Have you been sitting in this trial every day?

9 A. Yes, I have.

10 Q. All right.

11 MR. MARKETOS: Let's pull up Relators' Exhibit 316.

12 BY MR. MARKETOS:

13 Q. Do you recall witnesses like Ms. Sara Strand testifying
14 about Janssen's tracking of the prescriptions of its speakers
15 after attending -- after they started paying them to give
16 these speeches?

17 Do you recall her testifying to that, sir?

18 A. Yes.

19 Q. All right.

20 Now, we're looking on the screen, Exhibit -- Relators'
21 Exhibit 316 at the New England Speaker Sales Performance. Do
22 you understand that to be Janssen tracking the performance of
23 the speakers on its Promotional Speaker Bureau based on the
24 number of prescriptions that they were writing?

25 A. It certainly looks that way, yes.

SILLUP - REDIRECT - MARKETOS

1 MR. MARKETOS: Let's take a look at Relators' Exhibit
2 163. And we will go to page 4. This is in evidence.

3 BY MR. MARKETOS:

4 Q. We've got speaker performance. Dr. Brachman,
5 Dr. Catalla, Dr. Hagins, Dr. Melton, Dr. Stephens, Natalie
6 Wilson, Dr. Wade.

7 Do you see that, sir?

8 A. Yes, I do.

9 Q. You've got percentages of their speaker sales associated
10 with Prezista and Intelence.

11 Do you see that?

12 A. Yes.

13 Q. Are you aware of testimony from witnesses, including
14 Mr. Wilhelm, Ms. Strand, Ms. Graham and others, that speaker
15 performance was, in fact, tracked, including the number of
16 prescriptions they wrote after being paid?

17 A. Yes.

18 Q. You were asked about a SAFE committee. I think I saw a
19 document that shows this SAFE committee. Some committee that
20 apparently approves --

21 A. Approves speaker programs, yes.

22 Q. Did you hear the witnesses who were actually out in the
23 field testify about how speakers were actually selected in
24 real life, not on paper?

25 A. Yes, I did.

SILLUP - REDIRECT - MARKETOS

1 Q. All right.

2 And what did you hear from those witnesses about how
3 the speakers were selected?

4 A. Their ability to -- their ability and they're actually
5 writing scripts.

6 Q. And that responsibility Janssen put on the sales
7 representatives.

8 Do you recall that testimony?

9 A. Yes, I do.

10 Q. All right.

11 Now, there's a SAFE committee. You reviewed the
12 deposition testimony of Ms. Kaucher. She was a, as I
13 understand it, a compliance person for Janssen.

14 Do you recall reviewing her deposition testimony?

15 A. Yes.

16 Q. Ms. Kaucher had never heard of the SAFE committee. Do
17 you recall that testimony?

18 A. I recall that. I'm still wondering what -- if SAFE is an
19 acronym for something.

20 Q. Mr. Mattes didn't remember the name of it either.

21 Do you recall that when he was testifying here?

22 A. Yes. Yes, I do.

23 Q. All right. Maybe we'll find out.

24 Now, I didn't ask you, sir, specifics about the speaker
25 program and its compliance. I asked you questions about

SILLUP - REDIRECT - MARKETOS

1 off-label promotion through the speaker program.

2 Do you recall that?

3 A. Yes, I do.

4 Q. That's your area of expertise.

5 Correct?

6 A. Yes.

7 Q. Now, there are other experts, including Ms. Virginia
8 Evans, who will be coming to this courtroom and testifying on
9 Relators' behalf about the speaker program and its compliance
10 with the law.

11 Are you aware of that?

12 A. Yes.

13 Q. And have you reviewed her expert report in this case?

14 A. Yes, I did.

15 Q. The jurors will hear from Ms. Evans, that's not the
16 testimony that I asked you to offer to the members of the
17 jury.

18 Fair?

19 A. Yes, it is.

20 MR. MARKETOS: Your Honor, may I have one minute? I
21 think I'm done.

22 THE COURT: You may.

23 MR. MARKETOS: Thank you.

24 (Brief pause.)

25 BY MR. MARKETOS:

SILLUP - REDIRECT - MARKETOS

1 Q. Sorry, sir. One last thing.

2 We heard questions -- you were asked questions from
3 Ms. Brown about these communications between Janssen and the
4 Food and Drug Administration where Janssen purportedly
5 obtained approval for the marketing messages that it was
6 putting out into the field.

7 Right, sir?

8 A. Yes.

9 Q. Now, there were questions from Ms. Brown, have you seen
10 any 2253 forms or information that Janssen delivered to the
11 Food and Drug Administration for approval, and you did not.

12 A. I have not.

13 Q. All right.

14 As you sat here through the trial, have you seen
15 anything presented from Janssen at any time showing that
16 Janssen obtained approval from the Food and Drug
17 Administration for the messages it was delivering to doctors?

18 A. No, I did not. I heard that there was an internal
19 approval.

20 Q. Approval by Janssen.

21 A. By Janssen. That's not the same as DDMAC.

22 Q. Sir, very briefly, you've offered opinions to the members
23 of the jury today within the field of your expertise.

24 Right, sir?

25 A. Yes.

SILLUP - REDIRECT - MARKETOS

1 Q. And as I understand it, the insinuation -- or at least
2 the questions you were asked by Ms. Brown suggested that
3 Janssen's marketing efforts did not influence doctors.

4 We showed the members of the jury Janssen's own
5 conclusions about the effectiveness and the prescribing
6 behavior and the lasting impact their promotional efforts had
7 on doctors.

8 Do you recall that?

9 A. Yes, I do.

10 Q. Apparently, now, Janssen is arguing with Janssen.

11 Is that fair?

12 MS. BROWN: I object, Your Honor, to that question.
13 Argumentative.

14 THE COURT: Hold on one second. Yep, let me review
15 it.

16 Sustained. I'll ask you to rephrase.

17 BY MR. MARKETOS:

18 Q. Would you agree with me, sir, that in this courtroom,
19 Janssen's lawyers are apparently disagreeing with the
20 conclusion that Janssen's employees and representatives made
21 in real life about their ability to influence doctors'
22 prescriptions?

23 A. It appears that way.

24 MR. MARKETOS: Thank you. Nothing further.

25 Thank you, Professor Sillup.

PENELOW - DIRECT - RUSS

1 THE COURT: Thank you, Professor Sillup. You are
2 excused from the trial.

3 THE WITNESS: Thank you.

4 THE COURT: What do we have next, Mr. Marketos?

5 MR. RUSS: We call Jessica Penelow.

6 THE COURT: Sorry, Mr. Russ, it's your witness.

7 MR. RUSS: Yes, Your Honor.

8 THE COURT: I can't keep track. Everybody pops up
9 and down. I don't know who is doing what.

10 All right, ma'am. We're just going to have you sworn
11 in and then obviously you -- well, you can come if you need
12 to.

13 (JESSICA PENELOW, HAVING BEEN DULY SWORN/AFFIRMED, TESTIFIED
14 AS FOLLOWS:)

15 THE DEPUTY COURT CLERK: Please state your name and
16 the spelling of your last name for the record.

17 THE WITNESS: Jessica Penelow, P-E-N-E-L-O-W.

18 THE COURT: Are we ready to proceed, folks?

19 Mr. Russ, when you're prepared.

20 MR. RUSS: Thank you, Your Honor.

21 (DIRECT EXAMINATION BY MR. RUSS:)

22 Q. Good afternoon, Ms. Penelow.

23 A. Good afternoon.

24 Q. You know me?

25 A. I do know you.

—PENELOW - DIRECT - RUSS—

1 Q. Introduce yourself to the jury, please.

2 A. Hi, how are you. I'm Jessica Penelow. Good afternoon.

3 Q. Ms. Penelow, you've been here throughout the last couple
4 of weeks because you're a Relator in this case.

5 Right?

6 A. I am.

7 Q. Tell the jury a little bit about yourself. Where did you
8 grew up?

9 A. I was born in New York, and I grew up in south Florida,
10 near The Fort Lauderdale area.

11 Q. Where did you go to high school?

12 A. I went to high school in Coral Springs, Florida.
13 Taravella High School.

14 Q. What about college?

15 A. I went to University of Central Florida in Orlando first,
16 and then I transferred to Florida Atlantic University in Boca
17 Raton.

18 Q. What did you study there?

19 A. I studied healthcare administration.

20 Q. Did you go on from college and get a master's,
21 eventually, an MBA?

22 A. I did.

23 Q. Okay. We'll talk about that a little bit.

24 A. Okay.

25 Q. When you graduated from college, did you go into medical

—PENELOW - DIRECT - RUSS—

1 sales?

2 A. I did. I immediately went into medical sales right after
3 college.

4 Q. And give the jury a sense of sort of the time frame that
5 we're talking about and what you were doing.

6 A. It was about 1998 when I graduated, and I started
7 looking -- I was working in doctors' offices, so I was
8 familiar with the medical industry. Also waiting tables. And
9 I was very attracted to medicine and thought about possibly
10 going to medical school.

11 So I thought I would find something in my degree, which
12 was healthcare administration, which is the business end, and
13 something on the clinical end, and I went to a job fair and
14 ended up getting a job in medical supply sales.

15 That was my first job, with PSS.

16 Q. Is that PSS you said?

17 A. PSS.

18 Q. What does that stand for?

19 A. Physician Sales and Service.

20 Q. Where was that?

21 A. They were out of Tallahassee, Florida.

22 Q. Tell the jury what you were doing for that company.

23 A. So they had over 500,000 products that we sold. We were
24 a distributor. So when you got the job, the rule was that you
25 had to be willing to relocate. So I had to move out of

PENELOW - DIRECT - RUSS

1 Florida if I was going to take the job.

2 I did take the job. I was able to get the job, and I
3 was immediately transferred to North Carolina, where I did a
4 four-month training program, and then subsequently I was moved
5 to New Jersey.

6 Q. You were moved to New Jersey with PSS?

7 A. I was.

8 Q. What did you do in New Jersey?

9 A. I sold medical supplies to doctors. I went into doctors'
10 offices, called on the entire office, whether it be the office
11 manager, nurses, lab staff, physicians, and sold them all the
12 different products in different disease states, depending on
13 whether it was cardiology, internal medicine, so on and so
14 forth.

15 Q. Now, at some point did you leave PSS to go to a different
16 company?

17 A. I did.

18 Q. Where did you go?

19 A. I went to a company called Synthes.

20 Q. What does Synthes do?

21 A. Synthes is an orthopedic trauma company. So what we did
22 was we sold internal and external fixation. In laymen's, it's
23 basically plates and screws that fix broken bones.

24 So I was in the operating room. I was on call 24/7. I
25 had a pager at that time, and I was up all hours of the night

PENELOW - DIRECT - RUSS

1 working 24, 48 hours at a time without sleep, and worked in
2 the operating room with the orthopedic surgeons to help fix
3 the bones.

4 Q. Was it hard work?

5 A. It was extremely hard work.

6 Q. High pressure?

7 A. Very high pressure.

8 Q. Lots of stress?

9 A. Lots of stress.

10 Q. At some point did you leave that company?

11 Are we about in the early 2000s at this point?

12 A. Yes, we are.

13 Q. Okay.

14 A. About 2001.

15 Q. And so did you leave that company and then go to work for
16 a company called GlaxoSmithKline?

17 A. I did. GlaxoSmithKline Pharmaceutical Company.

18 Q. Tell the jury what type of company that is.

19 A. So that was the pharmaceutical experience that I was
20 being introduced to, coming from medical supplies and devices
21 before.

22 It was -- I was recruited there, and it was on -- the
23 Jersey Shore was my territory. And I called on cardiologists
24 and endocrinologists and psychiatrists, and I sold a heart
25 management drug, a diabetes drug, and Paxil, which is for

PENELOW - DIRECT - RUSS

1 depression.

2 Q. You also sold a drug called Avandia; is that right?

3 A. Avandia is for diabetes.

4 Q. Okay.

5 Now, compare and contrast how that job was like to your
6 previous jobs in medical sales?

7 A. Oh, it was very different. Medical supply and device
8 sales is very different from pharmaceutical sales.

9 Again like I said, the hours are very different. The
10 demand is very different. The stress level is very different,
11 and in pharmaceutical sales, there's a lot more regulations,
12 but it is a shorter day.

13 Q. So when you say "regulation," what are you talking about?

14 A. When I entered into the pharmaceutical industry, I
15 noticed that there was a lot more regulations than medical
16 device.

17 Q. Did you at some point leave -- and by the way, are you
18 choosing to leave these companies? Are they promotions?

19 A. No, actually I've been lucky, and I've been recruited by
20 a lot of friends. You know, you network in the industry, and
21 you get a call if you're a good sales rep, and they recruit
22 you to a new company if it's something that you're interested
23 in.

24 And you do the interview and try and get the job.

25 Q. Did you feel like you were moving up in the industry?

PENELOW - DIRECT - RUSS

1 A. I felt like going into pharmaceuticals may have been a
2 step back. 9/11 had just occurred, and I was involved in
3 volunteering there. I took a new lease on life and decided
4 that being on call 24/7 was a little bit rough for me.

5 So I wouldn't say that was necessarily a promotion but
6 a different type of sale.

7 Q. So pharmaceutical sales, in your experience, was actually
8 less stressful than some of the jobs that you had held before?

9 A. Absolutely.

10 Q. Okay.

11 Did you leave to go to BMS?

12 A. I did.

13 Q. Tell the jury what BMS is.

14 A. So B- -- Bristol-Myers Squibb is another pharmaceutical
15 company, and they have a specialty HIV division. I had a
16 girlfriend that had worked with at Glaxosmithkline who moved
17 into New York to take a territory, and they had an open
18 territory in the lower east side of Manhattan.

19 And she called and asked if I'd be interested. I was a
20 HIV peer educator in college at Florida Atlantic University,
21 so I had a special passion for patients with HIV.

22 I would go around the college, and I would teach how to
23 protect yourself, how to protect yourself with safe sex, doing
24 demonstrations in front of classes.

25 And so when I got the opportunity to get into HIV, that

PENELOW - DIRECT - RUSS

1 was it for me, and I took the opportunity immediately.

2 Q. So you were interested in the disease state --

3 A. Absolutely.

4 Q. -- back in college?

5 A. Yes.

6 Q. Where -- were you in Manhattan at this point?

7 A. I moved to Manhattan from New Jersey.

8 Q. What were you selling there?

9 A. So my first at BMS was to launch Reyataz, which you've
10 heard a lot about, and that was on the lower east side of
11 Manhattan, calling on infectious disease physicians.

12 Q. Can you name for the jury when you were at BMS some of
13 the physicians that you were calling on to sell Reyataz?

14 A. Sure. I had one of the big institutions on the lower
15 east side, which is Beth Israel Medical Center, which is on
16 2nd and 17th in New York City.

17 And some of the physicians, the head of the center was
18 Dr. Nadim Salomon, and some of the physicians were Dr. Gomez,
19 Dr. Koshy, John Weber, who was a PA, Dr. Waldron.

20 There was quite a few physicians that practiced out of
21 this HIV clinic that was strictly HIV.

22 Q. Now, we've heard a lot about the last couple weeks sort
23 of how fast these sales tactics work, but you were on the
24 ground in doctors' offices.

25 Fair?

PENELOW - DIRECT - RUSS

1 A. I was.

2 Q. Tell the jury -- and we'll start with your time at
3 Bristol-Myers.

4 A. Okay.

5 Q. Tell the jury sort of what your day-to-day was like when
6 you were meeting doctors and selling them on product like
7 Reyataz.

8 A. Okay. I would say no call was the same. It's a very
9 different job every day, which was nice, and I enjoyed that
10 thoroughly. Every time you go into a doctor's office you can
11 have a room full of -- I'm sure as you all know a room full of
12 parents or no patients. You can have a doctor that's had a
13 rough morning or had a wonderful morning.

14 So you never knew what you were walking into. I walked
15 into the doctors' offices. I tried to get an appointment with
16 the doctor, if possible, and then get some time with them to
17 be able to promote Sustiva and Reyataz, Sustiva as a non-NUC.
18 I sold that as well.

19 And I would have conversations with physicians and try
20 to get them to prescribe my two -- my two prescriptions that I
21 was selling at the time, get as much time as I possibly could
22 with them.

23 Q. It's been a couple weeks ago, but this jury was
24 introduced to a woman named Donna Graham.

25 A. Yes.

PENELOW - DIRECT - RUSS

1 Q. Is this where you met Ms. Graham?

2 A. It is.

3 Q. Did you work together?

4 A. We worked together.

5 Q. Okay.

6 In fact, I think Ms. Graham said, and you can correct
7 me if I'm wrong, that she actually helped recruit you to
8 Tibotec?

9 A. She did.

10 Q. Tell the jury about that.

11 A. Donna had left BMS because Tibotec was coming out with
12 this new great -- supposedly great PI that was coming to the
13 market that possibly could have been more efficacious than
14 Reyataz and possibly better tolerability or same as
15 tolerability.

16 And Donna moved from BMS to Johnson & Johnson or then
17 Tibotec, which is their new HIV division. It was an exciting
18 opportunity because it was a startup in -- under the Johnson &
19 Johnson umbrella.

20 So it was very exciting. They had a lot of great
21 benefits, great packages, and I was very excited to be able to
22 get into a new protease inhibitor and launch another protease
23 inhibitor because I had done it before with BMS.

24 Q. Did you enjoy your time at BMS?

25 A. Very much so.

PENELOW - DIRECT - RUSS

1 Q. When you were there at GlaxoSmithKline, were you ever
2 asked or instructed to sell any product off-label?

3 A. No.

4 Q. At any other position that you held before Tibotec, had
5 you ever been a whistleblower?

6 A. No.

7 Q. Have you ever been disciplined at those companies?

8 A. No.

9 Q. So let's -- let's jump forward to your time at Tibotec.

10 When did you join, 2006?

11 A. 2006 I joined.

12 Q. And you were in Manhattan at Bristol-Myers?

13 A. Yes, I was.

14 Q. Did you stay in Manhattan?

15 A. I did.

16 Q. Tell the jury, were you culling on the same doctors to
17 sell them this new drug, Prezista?

18 A. Yes. I think that was maybe why I was attractive to the
19 manager and why he recruited me was because I knew all the
20 doctors already from calling on them for three years at
21 Bristol Meyers.

22 So again, I had Beth Israel with all those same doctors
23 that I mentioned in addition to private practice, the same
24 physicians that I had been calling on for three years.

25 Q. Did you get a pay raise when you went to Tibotec?

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1 A. I did.

2 Q. Is that one of the reasons you took it?

3 A. Sure.

4 Q. So when you joined in 2006, who was your district
5 manager?

6 A. Frank Murphy.

7 Q. Tell the jury a little bit about Mr. Murphy.

8 A. Frank Murphy was the district manager who was a wonderful
9 guy. We had a very good relationship. He trained me very
10 well. I went into the home office for their formal training
11 program, and Mr. Murphy and I got out in the field pretty soon
12 after and started calling on physicians together.

13 Q. So you -- was this sometimes called ride alongs?

14 A. Ride alongs, yes.

15 Q. So your district manager, Mr. Murphy, would ride along
16 with you to go sell to distribution?

17 A. Exactly, we would go into together.

18 Q. How is that going in 2006 with Prezista?

19 A. When we first launched Prezista, there was -- it was a
20 high-stress situation. I think they've heard enough about the
21 fact that, you know, there was a very high goal, and none of
22 us thought we were going to meet our goal.

23 So that was very stressful at the beginning. Frank
24 Murphy was very good at keeping the corporate anger away from
25 the reps. He said, I'm going to take on all the hard stuff,

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1 you guys just go out and do your job. I'm not going to bother
2 you with it, and I'll take it all on, and he did a really good
3 job of doing that. He really kept it away from us.

4 So it wasn't stressful in the environment.

5 Q. Now, Ms. Penelow, we're going to move through this pretty
6 quickly because the jury has heard a lot about lipids.

7 A. Right.

8 Q. Do you know -- you knew about lipids from your time
9 selling Reyataz.

10 Right?

11 A. Yes, I did.

12 Q. Did you -- were you under the belief when you went to
13 sell Prezista that it was a lipid-friendly drug?

14 A. Absolutely.

15 Q. Why?

16 A. That's what I was told.

17 Q. Who told you that?

18 A. Frank Murphy and Tibotec.

19 Q. Did you quickly come to realize that that wasn't the
20 case?

21 A. I did. Unfortunately, you know, it was pretty soon after
22 I started that I realized -- analyzing the package insert was
23 my first time realizing it, and then --

24 Q. What are you talking about there? You had the package
25 insert or the label.

—PENELOW - DIRECT - RUSS—

1 A. Yes.

2 Q. You can see that's just not true on the label.

3 Right?

4 A. Correct.

5 Q. But then at some point, did you start to hear
6 conversations and witness things that you realized this lipid
7 issue may be a real issue?

8 A. Yes, absolutely.

9 Q. Tell the jury about that.

10 A. I had an experience with Dr. Ricky Hsu who is a doctor
11 that I called on. He was in Cabrini Hospital, if anyone's
12 familiar, and I had come in.

13 And he told me that Nancy Bartnett had been there the
14 day before and shared with him that Prezista coming out is
15 going to be great because it has grit lipids and the same as
16 Reyataz.

17 And he was a bit taken aback and said, I found that to
18 be a little odd that she was talking about a favorable lipid
19 profile when I was in the early access program.

20 So he did all the clinical trials for Prezista, and he
21 said, I actually had a lot of negative lipid parameters with
22 these patients.

23 Q. So there were some doctors like Dr. Ricky Hsu who knew,
24 who found out?

25 A. They found out in the early access program.

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1 Q. That it's bad for lipids?

2 A. Yes.

3 Q. But Nancy Bartnett was telling him that it was lipid
4 friendly?

5 A. Yes.

6 Q. Okay.

7 And you had the opportunity to go on many sales rides
8 and sales calls with Ms. Bartnett?

9 A. I did.

10 Q. Did she frequently sell to doctors that it was lipid
11 friendly from 2006 to 2013 when you left?

12 A. Most of the time.

13 Q. Was one of the reasons that you realized maybe the lipids
14 are a concern because you started seeing these off-label
15 studies?

16 A. Yes.

17 Q. Tell the jury about the off-label studies.

18 A. Frank Murphy would have district meetings, and we would
19 all get together, and he started introducing newer, smaller
20 studies to us, which I didn't quite understand, but certainly
21 was up for listening.

22 And the first study was the DART study, which I think
23 you guys have heard about. And it was in healthy individuals,
24 not HIV patients, which is my first hint that there was a
25 bit -- something wrong with the study.

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1 And it said that it was favorable to lipids and
2 comparable to Reyataz in the conclusions. That's what the
3 study said.

4 So I believed it.

5 Q. Did you witness people using the conclusions from the
6 DART study with doctors?

7 A. Yes, I did.

8 Q. All right.

9 How early in your employment did you see that?

10 A. I'd say, within the first three to six months,
11 Frank Murphy was using the DART study in the field and
12 Nancy Bartnett was using it very frequently.

13 Q. So to make sure that I understand and the jury
14 understands, Frank Murphy is your district manager, and then
15 Ms. Bartnett is your KAM, key account --

16 A. Correct, key account manager.

17 Q. Are they equals or --

18 A. Frank Murphy is, I think, one -- one layer above.

19 Q. Okay.

20 So Frank Murphy, then Ms. Bartnett, then you?

21 A. Yes.

22 Q. Okay.

23 Did Ms. Bartnett go on many sales rides with you?

24 A. I would say probably 80 to 85 percent of my calls were
25 with Nancy Bartnett.

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1 Q. Explain that. Why are there two people going on sales
2 calls to doctors' offices?

3 A. Nancy had been working for Pfizer-Allergan, which sold
4 Viracept, which was another HIV drug who -- that was on the
5 market before Reyataz and Prezista. And so she had the same
6 territory as me, so she knew these doctors for over ten years.

7 So where my relationship was only three years, she had
8 it for ten. So she would come on the rides -- on the rides
9 with me just simply at the beginning because she knew the
10 doctors very well.

11 She also was in charge of the key opinion leaders and
12 the big physicians that wrote a lot of prescriptions and the
13 speakers. So I had a couple speakers in my territory. I had
14 a lot of high-writing prescription physicians.

15 So she would come with me to be able to call on the
16 same doctors as I was calling on.

17 Q. Is part of the sales game, Ms. Penelow, relationships
18 with these doctors and building that trust?

19 A. Yes. If you look at any sales manual, you will see that
20 relationship building is one of the top three important things
21 in getting a sale.

22 Q. In your experience, does it help the doctor trust you
23 that you're telling them the truth about a medication?

24 A. Takes a lot of trust.

25 Q. Did Ms. Bartnett use the off-label studies with doctors

—PENELOW - DIRECT - RUSS—

1 in this time period?

2 A. She did.

3 Q. Did she also make homemade slides?

4 A. She did. She made homemade slides for the speakers when
5 they were doing their programs.

6 Q. Okay.

7 And we'll talk about those slides here in a little bit.

8 A. Okay.

9 Q. Was there a gentleman who was your sales trainer --

10 A. Yes.

11 Q. -- in that position?

12 A. Yes.

13 Q. Who is that?

14 A. Tim McSherry.

15 Q. Tell the jury about Mr. McSherry.

16 A. Tim McSherry was a friend of mine. He was on the west
17 side of Manhattan and called on St. Vincent's, which is a big
18 HIV center as well, and he was in charge of a lot of the
19 clinical information for the district.

20 He would gather studies from conferences and then
21 present them to us at district meetings.

22 Q. Now, at some point, did you have a conversation with
23 Mr. Murphy about his use of off-label studies and selling
24 off-label?

25 A. I did. Early on I expressed concern to Mr. Murphy.

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1 Q. Tell the jury about that.

2 A. Okay. I expressed concern immediately because I found
3 that we weren't selling off of the label or the sales pieces
4 and we were using these off-label studies. He understood
5 completely and told me that I did not have to sell off-label
6 but that him and Nancy were going to continue to do so.

7 Q. So this was Mr. Murphy that the jury heard from
8 Ms. Brancaccio about, right?

9 A. Yes.

10 Q. Because you're both in the same sales district at this
11 point?

12 A. Yes.

13 Q. Okay.

14 And I believe there was some testimony that he was a
15 good manager?

16 A. He was a good manager.

17 Q. So if I understand correctly, he said he is going to do
18 it, but you don't have to at this point?

19 A. Yes.

20 Q. Okay.

21 How did you respond to that?

22 A. Mixed emotions. It was difficult to know that we weren't
23 necessarily doing what I was taught from the home office, and
24 all the policies that were put in front of me when I first
25 started, but I understood that he was getting a lot of flack

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1 from the higher-ups and that we had to get our numbers up and
2 it was nonnegotiable.

3 Q. Why did you understand that?

4 A. It was just something that we all talked about as a
5 district. We're a very close district in New York because we
6 were so centrally located together. We all became very
7 friendly, and we talked about it very often.

8 Q. Compare, if you can, your sales pressure at your prior
9 job at Bristol Meyers with the sales pressure that you were
10 facing in 2006 at Tibotec.

11 A. There was not sales pressure at Bristol Meyers. It was a
12 purely motivating atmosphere. You got accolades when you did
13 something good. Rarely were you reprimanded, but if you were,
14 it was in a very professional way.

15 And the pressure at -- immediately at Tibotec was
16 something I had never seen before, and I wasn't aware of how
17 to respond to it, and it was pretty upsetting at the
18 beginning.

19 Q. What was the driving force? Take us back to 2006. What
20 was the driving force? Was it making your numbers and making
21 money, or was it the patient?

22 A. For me it's always been the patients. But, of course, as
23 salespeople, one of the questions they always ask you on an
24 interview is What do you want most out of your sales career?
25 And they want you to answer money, because they look at you as

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1 a more motivated salesperson if you want to make more money.

2 Q. Was there pressure motivation at this point? We heard
3 all about the forecast to get the sales up.

4 A. Yes, absolutely.

5 Q. Okay.

6 Did you start -- even Mr. Murphy didn't demand at this
7 point that you do it. Did you sell off-label? Did you sell
8 Prezista off-label?

9 A. I started to sell off-label, I would say, probably around
10 2007.

11 Q. Name some of the doctors, prescribers that you would go
12 into their office and give them off-label messages. Just tell
13 some of the prescriber names.

14 A. Some of the names. Okay. Dr. Kaminsky, Dr. Chavez, Dr.
15 Dalton, Dr. Salomon, Dr. Gomez, Dr. Koshy, John Weber, Mary
16 Waldron.

17 There was quite a -- there was quite a few.

18 Q. So these were real-life prescribers that you're sitting
19 in their office and giving them off-label information?

20 A. Yes.

21 Q. Was Nancy Bartnett doing this?

22 A. Yes.

23 Q. Were other salespeople in your district that you talked
24 to doing this?

25 A. Yes.

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1 Q. And you're under oath?

2 A. Yes.

3 Q. You understand?

4 A. I understand.

5 Q. These people were selling off-label in 2006?

6 A. We were all told to sell off-label.

7 Q. Mr. Murphy didn't demand at this point that you do it,
8 though?

9 A. That was just him and I together, but the rest of the
10 district was selling off-label.

11 Q. What about Ms. Bartnett?

12 A. Ms. Bartnett was absolutely with Mr. Dolisi in that if we
13 didn't sell off-label, we were not going to meet our numbers.

14 Q. So let's fast-forward a little bit. At some point,
15 Mr. Murphy goes to New Jersey.

16 Right?

17 A. Correct.

18 Q. And then Mr. Dolisi comes in to town in Manhattan.

19 Right?

20 A. Yes.

21 Q. Was Mr. Dolisi the same type of manager as Mr. Murphy?

22 A. No, he was not.

23 Q. How was he different?

24 A. He managed with fear and intimidation, and he did not
25 keep us away from what was coming in from the higher-ups as

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1 Frank did. He yelled at us frequently that we needed to get
2 our numbers up, that we needed to get our MIRs up, that we
3 needed to get more programs on the books, that we needed to
4 meet our sales numbers.

5 And it wasn't done in a nice fashion.

6 Q. What do you mean by not a nice fashion?

7 A. He was intimidating in the -- in the way that he spoke to
8 us, but I would also say threatening.

9 Q. Did he tie your sales metrics and performance to your
10 job?

11 A. He did.

12 Q. Did he tell you that he expected you to off-label sell?

13 A. Absolutely.

14 Q. Did Nancy Bartnett?

15 A. Yes. It was a requirement.

16 Q. One time they told you this?

17 A. No. This was at every meeting. We had meetings all the
18 time. As I said, we were a very close district. Tony liked
19 meetings. We met frequently, at least twice a month.

20 And at these meetings, Tim McSherry would give us a new
21 off-label study and tell us how to go out in the field and
22 sell it and pass them out to everyone, and that's what we
23 would do.

24 Q. So let's break that into pieces.

25 How would Mr. Dolisi give you the direction to go out

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1 and sell this way?

2 A. He basically said that the entire country was doing it
3 and that we needed to keep up with the country and that our
4 numbers were everything and that we -- our jobs were going to
5 be on the line.

6 We would either be put on a performance improvement
7 plan, a PIP, or we would lose our jobs if we weren't going to
8 make our numbers.

9 Q. Did you at some point get an opportunity to talk to other
10 sales reps around the country to confirm what Mr. Dolisi said,
11 that it's happening around the country?

12 A. I did. Tony Dolisi was very open with me that I had no
13 choice, and so I did open my mouth and talk to other people
14 about it.

15 Q. Who did you talk to?

16 A. I talked to everyone in my district about it. So
17 Christine Brancaccio, Donna Graham, Brad Rothenbuhler, Tim
18 McSherry, Angel Edwards, Reggie Cadet, Nancy Peterson from
19 New Jersey, Laura Knightly from the training department.

20 There was Joe Holshoe from the New York district -- for
21 the New England district, Russ Moyer from the New England
22 district, all the friends that I had made in my short tenure
23 there.

24 Q. So as you've sat through this trial, Ms. Penelow, you've
25 heard some questions about Don't you know we had a policy to

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1 report? Why didn't you report?

2 Have you heard some of those questions?

3 A. Of course. Yes, I've heard those questions.

4 Q. Let me ask you: You were talking about what you were
5 being required to do with your sales colleagues --

6 A. I was.

7 Q. -- who you just mentioned a number of them.

8 Right?

9 A. Uh-huh.

10 Q. What was happening? Why wasn't that being reported?

11 A. We all discussed that we didn't trust the anonymous line.
12 Others had used the anonymous line with horrible results.
13 They were fired, and we didn't trust that it was anonymous or
14 confidential.

15 So we didn't think that that was the best route to
16 take, the HCC 800 number, if you will.

17 Q. Were people in fear of losing their jobs?

18 A. Everyone I spoke to that I mentioned was in fear of
19 losing their job.

20 Q. Were they in fear of losing their jobs if they raised
21 their hands and said, Hey, stop doing this?

22 A. A lot of people put their head down and just did what
23 they needed to do.

24 Q. I want to talk to you a little bit about one of studies
25 that we've discussed.

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1 MR. RUSS: And this is Relators' 74, Ms. Johnson. I
2 believe it's already in evidence.

3 BY MR. RUSS:

4 Q. Ms. Penelow, you recall this email?

5 A. I do.

6 Q. You were on this email. At the time you
7 were Ms. Finkelstein?

8 A. I was. That was my maiden name.

9 Q. When were you -- when did you get married?

10 A. I got married in 2008. I've been married 16 years.

11 Q. We heard a little about your wedding. Donna Graham was
12 there?

13 A. Yes.

14 Q. Mr. Murphy was there?

15 A. Mr. Murphy was there.

16 Q. Dr. Nadim Salomon was there?

17 A. Dr. Nadim Salomon was there.

18 Q. Because you had developed trust with him, right?

19 A. Yes.

20 Q. Was -- Dr. Kaminsky was there?

21 A. Dr. Kaminsky was there.

22 Q. Okay.

23 Do you recall in 2006 -- I know you've seen it since
24 this email that you got from Mr. McSherry.

25 A. Yes, I do.

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1 Q. Now, if we could just spend a little bit of time with
2 this, and I want to go through it fairly quickly because I
3 know the jury has seen it.

4 This is the attachment comparing Prezista to Reyataz, a
5 trial in healthy volunteers looking at lipids.

6 Do you see that?

7 A. Yes.

8 Q. Was it around this time you started to realize these were
9 off-label studies about lipids and maybe what you were told
10 about the lipid profile wasn't true?

11 A. Yes.

12 Q. Okay.

13 "It was presented last Thursday"-- and we're going to
14 look to see where it was presented, okay?

15 A. Okay.

16 Q. -- "as a late-breaker at the DART meeting. There is no
17 difference between drugs with the regards to lipids."

18 That's not true.

19 Right?

20 A. That is not a true statement.

21 Q. "One side note: The study design had patients on
22 ritonavir alone for seven days before going on boosted
23 Prezista or boosted Reyataz for 21 additional days."

24 Do you see that?

25 A. I do.

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1 Q. Now, Mr. McSherry was confused and actually said, I don't
2 understand why they did this, besides just trying to improve
3 the results.

4 Do you see that?

5 A. I do.

6 MR. RUSS: Can we look at the attachment,
7 Ms. Johnson, page 2. If we could zoom in on the top of this
8 document.

9 BY MR. RUSS:

10 Q. Do you see this was reported by Jules Levin?

11 A. I do.

12 Q. Okay.

13 It was the metabolic changes, lipids, glucose in
14 healthy volunteers.

15 A. That was the study we discussed before, the DART study.

16 Q. They didn't have HIV?

17 A. They did not have HIV.

18 Q. Okay.

19 "Similar changes in metabolic parameters of darunavir,"
20 Prezista.

21 Right?

22 A. Yes.

23 Q. You're going to have to say that for me. I know it's
24 Reyataz. How do you pronounce it?

25 A. Atazanavir.

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1 Q. "Each coadministered with low dose ritonavir in healthy
2 volunteers."

3 You see where this was presented at the Frontiers in
4 Drug Development for Antiretroviral Therapies in Cancun,
5 Mexico?

6 A. I do see that.

7 Q. Okay.

8 Did you take this and use it with doctors?

9 A. I did.

10 Q. Why?

11 A. It had a great conclusion, which, as I mentioned before,
12 that I believed from the beginning. And it was a way to make
13 them believe that Prezista was comparable to Reyataz.

14 Q. So you had some doctors like Dr. Hsu who had already seen
15 the lipid profile who said, Hold on. That's not right?

16 A. Yeah.

17 Q. But you had other doctors who didn't know?

18 A. That is true.

19 Q. Tell the jury about those doctors.

20 A. A lot of doctors don't know whether you're speaking
21 off-label or on-label. They're -- again, as he mentioned,
22 they built a lot of trust with me.

23 And when I came in with a study, they knew that it came
24 from some conference, it may or may not be off-label, and they
25 would just listen to the conclusions and the summaries of that

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1 study.

2 MR. RUSS: You can pull that down, Ms. Johnson.

3 BY MR. RUSS:

4 Q. Was there another off-label study called METABOLIK?

5 A. There was.

6 Q. What was that?

7 A. METABOLIK was another small study, and it looked at
8 lipids as well, and in that study, the conclusion was that it
9 was similar to Reyataz and it had a favor lipid profile,
10 not --

11 Q. Favorable?

12 A. -- not -- not neutral, favorable.

13 Q. Okay.

14 Did you use that study?

15 A. I did. That was a very attractive word to the
16 physicians.

17 Q. Did the people that you worked with use that study with
18 physicians?

19 A. Yes, we all did.

20 Q. Did you personally hear Ms. Bartnett use those studies --

21 A. I personally --

22 Q. -- with physicians?

23 A. I personally heard Ms. Bartnett.

24 Q. Was there another study that was off-label called TRIAD?

25 A. There was a TRIAD study.

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1 Q. What was that?

2 A. I don't recall the TRIAD study specifics.

3 Q. Okay.

4 Was there --

5 A. Are you thinking of the TRIO?

6 Q. TRIO. I'm sorry.

7 A. TRIO, okay. TRIO, yes. So the TRIO study was a
8 different study. That was a once-daily study of Isentress,
9 which is an integrase inhibitor, which is a different class of
10 drugs. A protease inhibitor, Prezista and Intelence.

11 Q. Was that also off-label?

12 A. That was off-label because it was all once a day, and
13 Intelence is a twice-a-day drug.

14 Q. It's never been once a day?

15 A. Never been once a day.

16 Q. So I know the jury has heard a lot about the DART study
17 but -- and METABOLIK.

18 A. Yes.

19 Q. But there were other off-label studies.

20 Right?

21 A. There was a lot of off-label studies.

22 Q. We focused on a couple.

23 A. Yeah, we focused on a couple.

24 Q. And DeJesus was one of them?

25 A. DeJesus was another one, correct.

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1 Q. Did you use that one?

2 A. I did use that one.

3 Q. So Ms. Brown asked Ms. Brancaccio: Why were you using
4 this if it was stamped for educational purposes only.

5 A. Right.

6 Q. Explain that, please.

7 A. We had multiple copies of the study, so Tibotec or
8 Janssen would send us copies of these off-label studies. We
9 would get a binder in the mail, and it would have posters in
10 it from the conferences, and it would be stamped for
11 educational purposes only. Do not use in the field.

12 But we would also get from Tim McSherry, let's say, the
13 Jules Levin NATAP conclusion, and that did not have a stamp on
14 it, so it was much easier to use that as a piece with your
15 physician.

16 Q. So if you had a piece that didn't have the stamp on it,
17 was it easier to show to the doctor?

18 A. It was.

19 Q. Did you leave them behind?

20 A. I never left anything behind.

21 Q. Were you trained not to leave them behind?

22 A. Yes.

23 Q. Who told you to do that?

24 A. Tony and Nancy.

25 Q. Was the idea you didn't want to get caught doing it?

—PENELOW - DIRECT - RUSS—

1 A. Absolutely.

2 Q. We've seen that MIR email quite a few times -- I know;
3 we're moving forward -- where New York is being compared to
4 Florida.

5 Do you remember that?

6 A. Yes, yes.

7 Q. Tell the jury what happened, in your experience, with MIR
8 forms.

9 A. MIR forms were to be unsolicited questions. Unsolicited
10 questions don't come up very often, but when you are launching
11 a drug, you would hope that they want to know something other
12 -- that is in the label, if they're curious, if they have a
13 patient with maybe something that's different.

14 We were told by Tony and Nancy that we needed to get
15 our MIR volume up because we were being compared to Florida,
16 as you saw in that email, and Texas and California, and our
17 number was way below theirs.

18 So we were instructed to go out and solicit the
19 questions as opposed to use it as an unsolicited resource.

20 Q. We've seen a policy, Ms. Penelow, that says Janssen
21 doesn't let you -- you're not supposed to be soliciting these
22 things.

23 Do you know what I'm talking about?

24 A. That's correct.

25 Q. Why was it being done?

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1 A. There was many policies at Janssen. We had an ethics
2 policy. We had compliance policy. We had a policy for
3 everything. That's not --

4 Q. Hard stop.

5 Were they being followed or not?

6 A. They were not being followed in the field.

7 Q. Tell the jury why.

8 A. Because the management was under so much pressure that
9 they felt that they needed to tell us to go off-label, use the
10 MIRs, and go out in the field and make the numbers. Not only
11 was I fearing fir my job, I'm sure that they were fearing for
12 their jobs as well.

13 Q. Moving right along, I want to talk to you about some of
14 these speakers.

15 A. Okay.

16 Q. Right?

17 Did you schedule speaker programs?

18 A. Yes, I did.

19 Q. Okay.

20 Tell the jury how that would work.

21 A. Nancy was in charge of the speaker, and then I would be
22 in charge of filling the seats at the program, at the dinners.

23 So we would let the speaker pick the nicest, hottest
24 restaurant in New York City to do the program at. It always
25 had to be in a private room, not that we always did it in

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1 private room, but that was the requirement.

2 And I would recruit for the program based on who the
3 speaker was, whether it was Nadim Salomon or Dr. Segal-Mauer
4 or Dr. Kaminsky. Some of them were experts on Prezista. Some
5 of them were experts on Intelence.

6 And then we would all get together, have a program
7 where it's supposed to be promotional. Off-label information
8 and food and alcohol and everything was provided.

9 Q. Estimate for us how many speaker programs you went to
10 when you were at Janssen.

11 A. From 2006 to 2013, about probably close to a hundred.

12 Q. So how many -- a couple a week?

13 A. About two or three a week.

14 Q. Okay.

15 A. Yeah.

16 Q. How many of those were at restaurants?

17 A. I did some in the morning, breakfast. Those were at
18 restaurants, but diners. I did some at the hospital, but the
19 majority of them, I would say 80 percent, were at restaurants
20 at night.

21 Q. Okay.

22 Let's understand that because we just heard -- when
23 Professor Sillup was on the stand, we heard about some of
24 these educational programs and early access and these types of
25 educational-type speeches.

—PENELOW - DIRECT - RUSS—

1 Right?

2 A. Right.

3 Q. You're saying roughly 80 percent of yours were in nice
4 restaurants?

5 A. Yes.

6 Q. Okay.

7 Were some of them in the Blue Water Grill in New York?

8 A. Yes, Blue Water Grill.

9 MR. RUSS: If we could pull up, just for Ms. Penelow,
10 opposing counsel, and Court, Relators' 1398, please.

11 BY MR. RUSS:

12 Q. Do you recognize that photograph?

13 A. I do.

14 Q. What is it a photograph depicting?

15 A. That is Blue Water Grill --

16 Q. And you've heard --

17 A. Union Square New York.

18 Q. It's in Union Square?

19 A. Yes.

20 Q. Have you personally been to that restaurant?

21 A. Multiple times.

22 Q. Is that a true and accurate depiction of the restaurant?

23 A. It is.

24 MR. RUSS: Your Honor, we move to admit
25 Relators' 1319.

PENELOW - DIRECT - RUSS

1 MS. BROWN: No objection.

2 THE COURT: So admitted.

3 (Relators' Exhibit 1319 in evidence.)

4 MR. RUSS: If we could publish this for the jury,
5 please.

6 BY MR. RUSS:

7 Q. Was this a one-time thing that you would have a speaker
8 event at the Blue Water Grill?

9 A. No. It was a very popular restaurant in New York City,
10 so we had many, many programs there.

11 Q. Would sometimes doctors request where they wanted to
12 speak at a restaurant?

13 A. Most of the time.

14 Q. Again, for some details, which doctors would ask for
15 specific locations, in particular specific restaurants --

16 A. Right.

17 Q. -- to speak?

18 A. Dr. Kaminsky was a foodie, so he would read his Zagat's
19 guide, and he would find out the new hottest restaurant.
20 That's how we would choose the restaurant for the speaker
21 program.

22 Q. Did you --

23 A. Dr. Salomon would do the same.

24 Q. Dr. Salomon would do the same?

25 A. Yeah.

PENELOW - DIRECT - RUSS

1 Q. Okay.

2 We're going to talk about both of those physicians here
3 in a minute.

4 Did you also have speaker programs, dinners, at
5 Del Frisco's Manhattan?

6 A. I did.

7 Q. Okay.

8 MR. RUSS: And if we could pull up for the witness,
9 the Court and opposing counsel Relators' 1403, please.

10 BY MR. RUSS:

11 Q. Ms. Penelow, do you see on Relator's 1403 on the screen
12 in front of you?

13 A. I do.

14 Q. Do you recognize that as a true and accurate depiction of
15 Del Frisco's in Manhattan?

16 A. I do.

17 Q. Have you been to that location?

18 A. I have.

19 Q. Okay.

20 MR. RUSS: Your Honor, we move to admit
21 Relators' 1403.

22 MS. BROWN: No objection, Your Honor.

23 THE COURT: So admitted.

24 (Relators' Exhibit 1403 in evidence.)

25 BY MR. RUSS:

PENELOW - DIRECT - RUSS

1 Q. Ms. Penelow, was this also a location that doctors would
2 pick and say, I want to speak at Del Frisco's?

3 A. Yes. It's a very good steak house.

4 Q. I'm sorry, it's a what?

5 A. Very good steak house.

6 Q. Dinner would be served?

7 A. Dinner would be served. It would be in the private room.

8 We're not showing the room in this picture, but there is a

9 very nice private room there.

10 Q. Always all paid for by Janssen. We've heard --

11 A. Yes.

12 Q. -- about that?

13 A. Yes.

14 Q. Okay.

15 MR. RUSS: Let's look at for the witness, the Court,
16 and Janssen's counsel Relators' 1410, please.

17 BY MR. RUSS:

18 Q. Ms. Penelow, do you recognize Relators' 1410 as Le Marais
19 in New York?

20 A. I do. That's the private room.

21 Q. Have you been to that location?

22 A. Many, many times.

23 Q. True and accurate depiction of that restaurant?

24 A. Yes, very, very nice restaurant.

25 MR. RUSS: We move to admit Relators' 1410.

PENELOW - DIRECT - RUSS

1 MS. BROWN: No objection, Your Honor.

2 THE COURT: So admitted.

3 (Relators' Exhibit 1410 in evidence.)

4 BY MR. RUSS:

5 Q. Same thing, Ms. Penelow, another location that physicians
6 would request to speak?

7 A. Yes.

8 Q. Okay.

9 Name some physician that wanted to speak at this
10 location.

11 A. This was a Beth Israel favorite, so we had some of the
12 same ones that I mentioned before: Dr. Salomon, Dr. Gomez,
13 John Weber, Dr. Koshy, Dr. Waldron, Dr. Bailey.

14 We would have repeat attendees because they loved the
15 restaurant so much.

16 Q. When you say "repeat attendees," how do you know that?

17 A. Well, I was at all the programs, so I was there, and they
18 would sign the sign-in sheets, and they would all come to many
19 of Dr. Salomon's programs. He was the director of the
20 Peter Kruger Clinic at Beth Israel, and these were all his
21 subordinates.

22 Q. Let me break that into a couple questions.

23 So were you responsible for going out and finding
24 attendees?

25 A. Yes.

PENELOW - DIRECT - RUSS

1 Q. And how would you go about finding people who were
2 interested to come eat a fancy meal?

3 A. Well, once I told them that their boss was giving the
4 presentation, it wasn't so hard, and then secondly, the
5 restaurant was a drive. So I think that they felt somewhat
6 obligated to come hear Dr. Salomon speak.

7 Q. Make sure that we understand that. Dr. Salomon had
8 subordinates?

9 A. Yeah, they were all under -- underneath him, physicians
10 that worked underneath him.

11 Q. Are you saying that Dr. Salomon would routinely speak to
12 his own subordinates --

13 A. Yes they --

14 Q. -- at the speaker program?

15 A. Yes. That's what I'm saying.

16 Q. And Janssen would pay him to speak to the people that
17 work for him?

18 A. Multiple times.

19 Q. Roughly how many?

20 A. Over ten.

21 Q. Why was Janssen paying Dr. Salomon to speak at a
22 restaurant to his co-workers?

23 A. I don't think that they looked at that.

24 Q. What do you mean?

25 A. I just don't think that they looked at the name of the

PENELOW - DIRECT - RUSS

1 attendees and analyzed whether or not they were at the same
2 institution, and it just -- I never got questioned on it.

3 Q. When you say "they," where was compliance?

4 A. Oh, I never saw compliance.

5 Q. Ever?

6 A. Ever.

7 Q. Do you remember Ms. Graham saying the same thing?

8 A. Yes.

9 Q. Mr. Wilhelm?

10 A. Yes.

11 Q. You guys were, at different points in time, in different
12 parts of the country.

13 Right?

14 A. We were.

15 Q. You were in Manhattan, what, an hour away from the home
16 office?

17 A. Yes.

18 Q. And you don't remember compliance ever being at one of
19 your speaker programs?

20 A. They never came to one of my programs.

21 Q. Why were you and Ms. Bartnett arranging for so many
22 programs for the same attendees?

23 A. To drive their numbers. We were paying the physicians
24 for prescriptions. Basically the more programs that we were
25 giving the doctors, the more prescriptions we were getting in

—PENELOW - DIRECT - RUSS—

1 return.

2 Q. There's been some talk -- there was some testimony from
3 Professor Sillup about watching the prescription volume of
4 speakers.

5 Do you recall that testimony?

6 A. Yes.

7 Q. Did that happen in New York?

8 A. Yes.

9 Q. How did that happen?

10 A. Tony and Tim would analyze these things after programs.
11 We got a target report from a third party every week that told
12 us our numbers and how many prescriptions were written by each
13 physician.

14 And they would do an analysis and tell us exactly
15 whether or not we've increased or decreased physician
16 prescriptions after the program.

17 Q. Key distinction. Did that include the speakers?

18 A. Absolutely.

19 Q. You would see the numbers?

20 A. Yes, I would see the numbers.

21 Q. Would Mr. Dolisi talk to the field about the numbers from
22 the speaker prescriptions?

23 A. Yes, sure.

24 Q. Would Ms. Bartnett?

25 A. They would show charts all the time.

PENELOW - DIRECT - RUSS

1 Q. Another way of saying that is they were being tracked?

2 A. Yes, they were being tracked.

3 Q. So you had Dr. Salomon, whose -- let me make sure I
4 understand -- requesting restaurants where he wanted to speak?

5 A. Yes.

6 Q. Bringing his co-workers?

7 A. Yes.

8 Q. You said maybe around ten times?

9 A. At least.

10 Q. At least. Janssen is paying him to do that?

11 A. Yes.

12 Q. While ensuring these prescriptions?

13 A. Yes.

14 Q. Were they going up?

15 A. Yes, they were.

16 Q. Were there some doctors or prescribers whose
17 prescriptions didn't go up enough?

18 A. Sure. There was some.

19 Q. Were you -- was there an instance where you had to give
20 somebody bad news that they weren't going to stay on the
21 speaker bureau?

22 A. There was. There was a situation where Nancy came to me
23 and told me that Dr. Bailey, who was also a physician at
24 Beth Israel Medical Center -- that he wasn't writing enough
25 Prezista and that he was going to be kicked off the speaker

PENELOW - DIRECT - RUSS

1 bureau.

2 Q. So there was a Lloyd Bailey that Ms. Graham talked about.

3 A. Different Bailey.

4 Q. This is a different Bailey?

5 A. Yes.

6 Q. This is Dr. Juan Bailey.

7 A. Juan Bailey.

8 Q. Okay.

9 I want you to describe that incident where Ms. Bartnett
10 came to you and explained to you what the problem was --

11 A. Okay.

12 Q. -- with Dr. Juan Bailey's prescriptions.

13 A. Okay. We were at the Gramercy Diner on 17th. I remember
14 it very clearly. She told me that she didn't want to go to
15 Dr. Bailey and that I was to do it. And she told me that I
16 could not tell him the truth as to why I was kicking him off
17 the speaker bureau.

18 So we were brainstorming as to what we were going to
19 tell him as to why we were kicking him off, and we came up
20 with just telling him that they were making the speaker
21 bureau -- we had a lot of speakers, obviously you've heard 150
22 speakers, that we were just making the speaker bureau smaller.

23 And he wasn't very happy when I told him. I did go in
24 and tell him that, and he wasn't very happy about it.

25 Q. Ms. Bartnett made you tell him?

PENELOW - DIRECT - RUSS

1 A. She did make me tell him. She wasn't going to do it.

2 Q. She told you to lie?

3 A. She told me to lie.

4 Q. Did you lie?

5 A. I did lie.

6 Q. Why didn't you just tell him the truth, You're not
7 writing enough prescriptions?

8 A. I still felt that at that time that whatever Nancy and
9 Tony said was the word of the law, and if Nancy told me to do
10 something, I did it.

11 MR. RUSS: If we could pull up Relators' 42. I
12 believe this is in evidence already. If we could zoom in
13 under speaker bureau update.

14 BY MR. RUSS:

15 Q. Ms. Penelow, I don't know if you recall this email.
16 Mr. Wilhelm talked about it. We talked about the 150 speakers
17 and how quickly the 150 speakers' spots were filled and the
18 training.

19 A. Right.

20 Q. Do you remember that?

21 A. Right.

22 Q. Do you see -- we talked about San Francisco. Mr. Wilhelm
23 talked about where that training was, The Palace in
24 San Francisco.

25 Do you remember that?

PENELOW - DIRECT - RUSS

1 A. Uh-huh.

2 Q. Do you see the one in Miami?

3 A. Yes.

4 Q. Have you ever been to the Biltmore Hotel in Coral Gables,
5 Florida?

6 A. I have.

7 MR. RUSS: If we could pull up for the witness,
8 opposing counsel, and the Court, Relators' 1411, please.

9 BY MR. RUSS:

10 Q. Ms. Penelow, same question? Is that a true and accurate
11 depiction of the Biltmore Hotel in Coral Gables, Florida?

12 A. That is the Biltmore Hotel.

13 MR. RUSS: Your Honor, we move Relators' 1411.

14 MS. BROWN: I have no objection.

15 THE COURT: So admitted.

16 (Relators' Exhibit 1411 in evidence.)

17 BY MR. RUSS:

18 Q. Was this where, the best of your recollection, the
19 training for the speakers was held in Miami, which is a --
20 Coral Gables is a suburb?

21 A. Exactly.

22 Q. You've been to this hotel?

23 A. I have.

24 Q. It's pretty nice?

25 A. Very nice hotel. My cousin got married there.

—PENELOW - DIRECT - RUSS—

1 Q. Okay.

2 Is this another location that Janssen would pay for
3 airfare and meals and travel and hotel for speakers?

4 A. Yes.

5 Q. Okay.

6 Let's talk about --

7 MR. RUSS: You can pull that down, Ms. Johnson.

8 BY MR. RUSS:

9 Q. Let's talk about those slides that I mentioned a bit ago.

10 A. Okay.

11 Q. This jury has heard a little bit about those homemade
12 slides. How did Ms. Bartnett go about getting off-label
13 slides to speakers?

14 A. Again, as I mentioned, Tim was very clinical and also
15 great with the computer, so her and Tim together would make
16 the slides. They would take the results from the conferences
17 and the different updates that were being provided to the
18 physicians.

19 And they would make their own slides, and then they
20 would slip them into the approved slide deck, so that when
21 they got to that slide, they were able to talk off-label.

22 Q. Was there sort of a prespeech meeting where you and
23 Ms. Bartnett would meet with the doctors to go over the
24 speech?

25 A. Oh, every program. She would give the speaker the slides

—PENELOW - DIRECT - RUSS—

1 that she would prepare.

2 Q. How did that conversation work? Give us an example. A
3 name of a physician, please.

4 A. Okay.

5 Q. Right?

6 How did that work where you would sit down and give
7 them off-label slides, and what would you tell them?

8 A. I remember a specific instance with Dr. Kaminsky because
9 he was in a rush that day, and we ended up staying with him
10 for an hour, and she asked me to come with her to go see Dr.
11 Kaminsky because we always did this together, and he had a
12 program that night.

13 And she had a flash drive, and that's where she would
14 keep all her off-label slides. And we went into Dr.
15 Kaminsky's office. He -- she wanted him to go over the slides
16 with her, and he said, I want you to just read them to me.

17 So she put her slide -- her flash drive into his
18 laptop, downloaded the slides on to his computer, so that that
19 night, he can present them to the attendees.

20 And she proceeded to go through the slides, and when
21 she got to the homemade slides, she just told him that there
22 would be someone in the audience that was going to ask a
23 question, if he could just reference these slides at that
24 point.

25 Q. How did Mr. Bartnett -- Ms. Bartnett know that somebody

PENELOW - DIRECT - RUSS

1 in the audience was going to ask a question?

2 A. The majority of the time we would put a plant in the
3 audience to ask an off-label question.

4 Q. Okay.

5 The jury has heard a little about plants over the last
6 three weeks. Explain that process. How would you get
7 somebody to raise their hand or stand up and ask an off-label
8 question?

9 A. Obviously those people I had good relationships with that
10 I was able to ask to come to the program. Obviously they were
11 going to get a good dinner. They were going to go to a good
12 restaurant, and all they had to do is ask an off-label
13 question to open up the conversation to off-label
14 conversations.

15 And that's what they would do. So it would be as
16 simple as, Can you tell us a little bit about any of the new
17 lipid data that's out on the market, or what was taught at the
18 latest conference about lipids, or can you tell us a little
19 bit about Intelence QD.

20 And Nancy would have the slides in the slide deck ready
21 to go for him.

22 Q. Why were you using plants to ask off-label information?
23 Why not just let the doctor speak on-label?

24 A. Well, we would sometimes, and a lot of the times it
25 didn't come up. A lot of questions just didn't get asked.

PENELOW - DIRECT - RUSS

1 And so after a while, we felt that we had to put a plant in
2 the audience to get the conversation to an off-label
3 conversation.

4 Q. Why?

5 A. Because we needed to have more than just the AIDS share
6 of patients. In the experienced patient population, it was a
7 very different time. Patients were actually doing better at
8 this time.

9 The ones that were really, really sick unfortunately we
10 had lost at that point. So a lot of patients that were around
11 were on medication, and so we needed to move both drugs,
12 Prezista and Intelence, up the line earlier on. And so it was
13 very important that we spoke about using them in naive
14 patients.

15 Q. Did some of these doctors speak off-label on their own
16 without plants?

17 A. I think once they got used to it, naturally sometimes it
18 would come out.

19 Q. Okay.

20 But when you heard -- and how many of these about a
21 hundred or so speaker programs would you guess that you heard
22 off-label messages being delivered?

23 A. I'd say most of them. But, I mean, 80 to 90 percent.

24 Q. And were you helping with Ms. Bartnett to get that
25 conversation going through these plants?

PENELOW - DIRECT - RUSS

1 A. Yes, I was.

2 Q. And through the off-label slides?

3 A. I wasn't -- I didn't talk during the program. This was
4 just beforehand.

5 Q. Right.

6 Were you and Ms. Bartnett helping the physicians get to
7 an off-label message by giving them these off-label slides?

8 A. Yes.

9 Q. Was there any reason to do that other than to increase
10 sales?

11 A. No. That was the reason.

12 Q. Why else would you do it?

13 A. There would be no reason -- other reason besides raising
14 our numbers and making sure we didn't lose our jobs.

15 Q. And you knew what your numbers were.

16 Right, Ms. Penelow?

17 A. We were very aware.

18 Q. They reminded you?

19 A. They remind us weekly.

20 Q. Did this -- did it work? Did the sales go up?

21 A. Sales went up.

22 Q. And you kept doing it?

23 A. Yes, we kept doing it.

24 Q. Now, again, I think details matter, who are some of the
25 plants that you would ask to ask off-label questions?

PENELOW - DIRECT - RUSS

1 A. Nancy had a really good friend. Like I said, she was in
2 the city for ten years, so she knew a lot of people. She had
3 a very good friend Mark Miller, who was a nurse at
4 St. Vincent's.

5 Q. Where was that, in Manhattan?

6 A. In Manhattan, yes, on the west side of Manhattan, lower
7 west side. And he would be a plant many, many times. I don't
8 know -- he must have gone to almost 50 programs.

9 Nadim Salomon, who was a speaker, would also act as a
10 plant for us because he understood the process of what we were
11 trying to accomplish.

12 Q. Is this the same Dr. Salomon that would pick the
13 restaurant that he wanted to go to?

14 A. Yes.

15 Q. And then invite his colleagues?

16 A. Yes.

17 Q. And Janssen would pay him to talk to his colleagues?

18 A. Uh-huh.

19 Q. He would be a plant for you?

20 A. He would.

21 Q. Did you -- did you personally ask --

22 A. I did.

23 Q. -- him to be a plant?

24 A. I did.

25 Q. How did that exchange happen?

PENELOW - DIRECT - RUSS

1 A. I would say just like we did at your program and you were
2 able to go to the off-label slides, would you be willing to
3 ask that question at Dr. Kaminsky's program.

4 So they would go to each other's programs and ask these
5 questions for each other.

6 And then there was some -- a couple other off-label
7 plants, John Weber, my PA. He was not a speaker. He would
8 come to a lot of Dr. Nadim Salomon programs, and he would
9 pretty much always be the Prezista plant and ask about lipids.

10 Q. How long do these dinner speeches last?

11 A. Long, like two to four hours.

12 Q. Okay.

13 A. Yeah.

14 Q. So the whole --

15 A. The whole evening.

16 Q. Okay.

17 Well, how long would the talk last?

18 A. Oh, the talk. 45 minutes to an hour.

19 Q. And you heard Ms. Brown asking Professor Sillup about his
20 hourly rate.

21 A. Yes.

22 Q. So for 45 minutes or so, these doctors were getting paid
23 anywhere between a thousand and \$2,500?

24 A. \$2,500 was my speakers.

25 Q. Your speakers get 2,500?

PENELOW - DIRECT - RUSS

1 A. Yes.

2 Q. Okay.

3 \$2,500 an hour?

4 A. Yes.

5 Q. At restaurants that they would pick --

6 A. Yes.

7 Q. -- to speak to sometimes their own colleagues?

8 A. Yes.

9 Q. So if it's 45 minutes, you just -- you just said it would
10 sometimes lasts four hours.

11 A. Yes.

12 Q. Explain that.

13 A. It was a very social time. Again, I think HIV wasn't as
14 detrimental as it was a little bit earlier because patients --
15 it was a manageable disease. Patients were doing well.

16 So it was a very cheery atmosphere. Everybody was
17 drinking top shelf alcohol and nice bottles of wine, and
18 people stayed and socialized.

19 Q. Janssen paid for it?

20 A. And Janssen paid for it.

21 Q. We've got a few more minutes here.

22 We've heard a little bit about the speaker selection.

23 A. Okay.

24 Q. All right.

25 Just to be clear, before this trial had you ever heard

—PENELOW - DIRECT - RUSS—

1 of the SAFE committee?

2 A. I haven't.

3 Q. But you were working at Janssen --

4 A. I was.

5 Q. -- six years?

6 And you don't recall hearing about the SAFE committee?

7 A. No.

8 Q. Did Ms. Bartnett recommend speakers?

9 A. Most of the time. She would come to me and ask me who
10 would be willing to speak off-label. I had some conversations
11 with physicians such as John Weber, and he said, I would
12 rather be a plant, I don't want to be the one standing in the
13 front of the room speaking off-label, but I will be your
14 plant.

15 So I would make suggestions to Nancy, but she was in
16 charge of making the recommendations to the upper management.

17 Q. So Ms. Bartnett would make recommendations for speakers
18 to the home office?

19 A. Correct.

20 Q. Are you aware of any time Ms. Bartnett's recommendations
21 were declined?

22 A. Not very often. Not that I can think of.

23 Q. You can't think of any today?

24 A. Today I can't think of any.

25 Q. How would Ms. Bartnett choose who she was going to

—PENELOW - DIRECT - RUSS—

1 recommend to be a speaker?

2 A. There was a lot of different criteria. It could be a key
3 opinion leader. It could be an institution that was well
4 respected, or it could be a high prescription writing
5 physician, or it could be a low prescription writing
6 physician, who she was looking to gain more prescriptions
7 from.

8 Q. Do you recall that around the spring of 2006 the
9 PowerPoint slides that I went over with Ms. Graham about
10 targeting high prescribers of competitor drugs --

11 A. Yes.

12 Q. -- to be speakers?

13 A. Yes.

14 Q. And that was in New York?

15 A. That was in New York.

16 Q. Okay.

17 Was that -- was that one of the strategies that was
18 used to get prescriptions of Prezista was to target high
19 prescribers of the competitor drug?

20 A. Sure. We've all seen the slides this week. We know that
21 switches are what needed to happen with Prezista, so we needed
22 those Reyataz patients. So absolutely, that was one of the
23 criteria.

24 Q. Not just Reyataz; we saw some high prescribers of
25 Kaletra?

PENELOW - DIRECT - RUSS

1 A. Kaletra as well.

2 Q. Okay.

3 MR. RUSS: Your Honor.

4 THE COURT: This is the spot. Is this a good place
5 to stop?

6 MR. RUSS: Yes, it is.

7 THE COURT: 30 seconds. You want 30 seconds? That's
8 not going to do anything for you, is it?

9 MR. RUSS: I'd probably just do something silly.

10 THE COURT: All right. Folks, we're going to pause
11 the trial or stop for the day. Let's get the jurors home, and
12 we'll reboot tomorrow.

13 THE DEPUTY COURT CLERK: All rise.

14 (The jury is excused.)

15 THE COURT: Off the record.

16 (Court adjourned at 5:02 p.m.)

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FEDERAL OFFICIAL COURT REPORTER'S CERTIFICATE.

- - - - -

I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

I

/S/ Megan McKay-Soule, RDR, CRR May 22, 2024

Court Reporter

Date

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